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Number:

IN THE
SUPREME COURT OF THE UNITED STATES

Joseph Robinson,
PETITIONER

v.

California, Plumas County, Jeff Cunan, Garrett Olney, Ira Kaufman, William Pangman, and Gary Mcgowan,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Joseph Robinson
10608-B Bethel Road
Frederick, MD 21702
josephrob@earthlink.net

QUESTIONS FOR REVIEW

Does an individual have the right to a civil remedy in an action at law for recovery of damages under the following circumstances?

- Imprisonment in state prison
- Conviction reversed on appeal for a violation of the right to counsel
- Charges dismissed or acquitted after reversal

If yes, which party is liable to Petitioner?
Olney, Kaufman, Pangman, Cunan, and/or McGowan, and/or Plumas County,
and/or California.

If no, where is Petitioner's right to counsel?

LIST OF PARTIES

Petitioner Joseph Robinson is an individual.

Respondents:
California is one of the United States.
Plumas County is in California.
Garrett Olney, Ira Kaufman, and William Pangman are individuals who acted as judges for California.
Jeff Cunan and Gary McGowan are individuals who acted as prosecutors for Plumas County and California.

TABLE OF CONTENTS

QUESTIONS FOR REVIEW.....2
LIST OF PARTIES.....3
TABLE OF CONTENTS.....3
TABLE OF AUTHORITIES.....4
STATEMENT OF JURISDICTION.....4
CONSTITUTIONAL PROVISION.....4
SUPREME COURT RULE 10.....5
PLEA FOR PROTECTION OF THIS COURT.....6
THE FACTS – FALSE IMPRISONMENT.....6
CIVIL REMEDY.....7
ARGUMENT.....8
CONCLUSION.....13
PRAYER FOR RELIEF.....15
PROOF OF SERVICE.....16

TABLE OF AUTHORITIES

Sixth Amendment to the United States Constitution...4
Gideon v Wainwright.....5
Title 42, U.S.C. Section 1983.....14
Title 42, U.S.C. Section 1985.....14

STATEMENT OF JURISDICTION

- On February 18, 2007, the Ninth Circuit rendered the judgment this petition seeks to review.
- On March 10, 2007, Petitioner filed a petition for a rehearing en banc in the Ninth Circuit.
- On May 7, 2007, a rehearing en banc was denied.
- On May 30, 2007, Petitioner served this petition for a writ of certiorari in this Supreme Court.

The United States Constitution and Supreme Court Rule 10[C] confer jurisdiction on this Court to review the judgment in question on a petition for writ of certiorari because it conflicts with a relevant decision of this Court, a Constitutional provision and equity.

This Court should review this judgment because it affects every body in the United States who is or may be a defendant in a criminal case in a state court.

CONSTITUTIONAL PROVISION

Sixth Amendment to the United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right.....to have the assistance of counsel for his defense."

SUPREME COURT RULE 10(C)

The Ninth Circuit decided that an individual who has been wrongfully convicted and imprisoned in a state due to violation of the right to the assistance of counsel does not have a right to a civil remedy because judges, prosecutors, and states are immune from civil liability. This decision conflicts with a Constitutional provision, relevant decision of this Court, common sense, equity, nature and civilization.

- Constitutional Provision: Sixth Amendment
- Relevant decision of this Court:
  Gideon v Wainwright

A defendant in a criminal case in a state court has the right to the assistance of counsel, and the state must provide an attorney for any defendant who wants an attorney and cannot afford an attorney.

- Common Sense: *Ubi jus ibi remedium.*
  There is no right without a remedy.
- Equity: *Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola ratione consistens.*

Equity is a sort of perfect reason which interprets and amends written law, comprehended in no code, but consistent with reason alone.

- Nature: *Jura naturæ sunt immutabilia.*

The laws of nature are unchangeable. People who have been intentionally, wrongfully, grievously injured by known parties always, in all places, and in all times, demand a remedy.

- Civilization: The basis of civilization is the civil remedy. Its purpose is to avoid the uncivil remedy.

PLEA FOR THE PROTECTION OF THIS SUPREME COURT

Petitioner now comes before this Honorable Court and requests that this Court and its Honorable Judges advocate for and protect his Constitutional rights by providing the remedy sought in this petition because Defendants Olney, Kaufman, Pangman, McGowan, and Cunan wrongfully convicted and imprisoned him through knowing violation of his right to counsel while California caused, allowed and condoned this felony.

THE FACTS - FALSE IMPRISONMENT

The following facts constitute false imprisonment and are indisputable.

1. On July 31, 2001, Defendants convicted and imprisoned Petitioner.
2. On February 18, 2003, California State Prison paroled Petitioner after 567 days of post-conviction imprisonment.
3. On March 18, 2003, the California Third District Court of Appeal reversed Petitioner's conviction because respondents violated his right to counsel.
4. On May 22, 2003, the Appellate Court remitted Petitioner's case back to the Plumas County Court.
5. On September 3, 2003, the Defendants dismissed all charges against Petitioner, with prejudice.

The appended statement of 647 facts proves beyond all reasonable doubt the malicious intent and conspiracy of Olney, Kaufman, Pangman, Cunan and McGowan.

CIVIL REMEDY

If there is no civil remedy for a wrongful conviction and imprisonment caused by a violation of right to the assistance of counsel, there is no right to counsel.

Petitioner first sought a civil remedy in the United States District Court for the Eastern District of California, but California, the prosecutors and judges all claimed immunity from civil liability, and Judge Burrell ignored equity by upholding their claim of immunity while ruling Plumas County is not liable.

Petitioner then appealed in the Ninth Circuit for a civil remedy, but the three-judge panel ignored equity and ruled that he is not entitled to a civil remedy because prosecutors, judges and states are immune from civil liability. Petitioner then petitioned for, but was denied, an en banc rehearing in the Ninth Circuit.

This Ninth Circuit decision means that prosecutors and judges and states are immune from civil liability no matter how outrageous, unlawful and harmful their conduct and that people who have been wrongfully imprisoned because of violation of the right to counsel do not have a right to a civil remedy in a court of law. If there is no civil remedy for the injury caused by a violation of the right to counsel, the Sixth Amendment has been abolished.

This unlawful and inequitable Ninth Circuit decision harms everybody who is, or may be, or may need, a defendant in a criminal case.

ARGUMENT

When intentionally, wrongfully, grievously injured, people always have, do now, and always will, demand a remedy. This is human nature. Civilization is the substitution of a civil remedy for an uncivil remedy.

In the American judicial system no more serious threat to personal liberty can be imagined than corrupt state judges and prosecutors conspiring and acting together for a private purpose other than the pursuit of justice to unlawfully convict and falsely imprison an individual accused of a crime.

Clothed with the power of their state and authorized to pass judgment on every aspect of due process, judges and prosecutors conspiring and acting together have the opportunity to deprive people of life, liberty and property in complete disregard of the evidence, equity, state law and the United States Constitution.

The injuries inflicted upon the wrongfully convicted and imprisoned have always been severe and enduring, even terminal, but now, due to judicial invention and expansion of "harmless error" and "judicial immunity" they have become epidemic as state judges and prosecutors feel free to violate due process with intent to unlawfully convict and falsely imprison people because they believe they have harmless error as a shield from appellate reversal for their lesser violations of due process and immunity as a shield from civil liability for even their flagrant, egregious, intentional, conspiratorial, criminal violations of due process.

Judges and prosecutors should not be immune from civil liability under all circumstances, no matter how outrageous their conduct, but, if they are, then the state must pay when the judges and prosecutors wrongfully imprison an individual by violating the Constitutional right to the assistance of counsel.

In three separate hearings in a period of six weeks the three Plumas County Judges, Olney, Kaufman and Pangman, acted with the obvious agreement of the two Prosecutors, Cunan and McGowan, to intentionally violate Petitioner's right to counsel by refusing to appoint counsel for Petitioner for reasons they all knew to be without support in California law.

In all three hearings, all five of these court officers knowingly violated California law by allowing the prosecutors to stay in the courtroom during financial eligibility hearings that they knew must be in camera.

Cunan and Pangman knowingly violated California Penal Code Section 866.5 by examining Petitioner at the preliminary hearing without counsel or a waiver of counsel. During this examination, Petitioner admitted that he cultivated marijuana, then stated the facts, equity and California law that justified his production of marijuana for people who had lawful right and authority to obtain and use marijuana for medical purposes, but not the wherewithal to produce it.

The California Third District Court of Appeal stated that the conduct of the Plumas County Court Officers "violated all the rules of fair play".

At the trial, Cunan and Olney, over Petitioner's written motions and objections, knowingly violated California law by refusing to instruct the jury on justification, preventing Petitioner from presenting any justification evidence or law to the jury, and then giving the jury Petitioner's unlawfully obtained, truncated preliminary hearing testimony, with Petitioner's admissions about cultivating marijuana, but without the law and facts which justified his acts in California, (state which has legislation that recognizes marijuana is medicine), and then instructing the jury that Petitioner's truncated justification testimony was a confession.

Before the trial, Cunan and Olney offered Petitioner bail pending appeal if Robinson would waive his right to a jury trial, allowing Olney to decide the facts. Petitioner exercised his right to a jury trial. After conviction, before sentencing, Petitioner requested bail pending appeal. Cunan and Olney informed Petitioner that they would not release Petitioner on bail pending appeal because Petitioner exercised right to a jury trial.

Olney, Kaufman, Pangman, Cunan and McGowan and/or California and/or some other person must be held liable to Petitioner for the 567 days of post-conviction incarceration because the aforementioned individuals violated Petitioner's right to counsel to wrongfully convict and imprison Petitioner, and they acted knowingly, willingly and maliciously with agreement and intent to wrongfully convict and imprison Petitioner.

Whatever the motive for their violation of Petitioner's right to counsel, Petitioner is entitled to a civil remedy for the 567 days of post-conviction imprisonment. If the aforementioned individuals are immune from civil liability in this case, then California or Plumas County or some other person must compensate Petitioner for the 567 days of wrongful imprisonment.

It is not fair or just to imprison Petitioner without a lawful conviction and without fair compensation. Wrongfully convicted and imprisoned people have the right to monetary compensation where there has been appellate court reversal of the conviction caused by a violation of the right to counsel and subsequent dismissal of all charges with prejudice. If judges and prosecutors are immune from civil liability under all circumstances no matter how outrageous their conduct, California, Plumas County, or some other person must be liable to Petitioner in a civil remedy for 567 days of wrongful imprisonment.

Petitioner could not remove to a United States Court to prevent or stop the violation of his right to counsel, wrongful conviction or wrongful imprisonment and the state appeal that reversed the wrongful conviction was not speedy or adequate enough to prevent the wrongful imprisonment. In spite of the facts and Petitioner's numerous and persistent administrative and criminal complaints, Olney, Kaufman, Pangman, Cunan and McGowan were not prosecuted, did not lose their jobs, and were not reprimanded or even investigated.

Where is Petitioner's right to counsel?

The only civil remedy available to Petitioner in this matter is this case. If this Court rules Olney, Kaufman, Pangman, McGowan, and Cunan, and California, and Plumas County, and all other persons, are immune from civil liability in this case, this is ruling that people who have been imprisoned without a lawful conviction due to violation of their Sixth Amendment right to counsel do not have the right to a civil remedy, which is not only contrary to the rudimentary demands of justice, but destructive of the guarantee of the right to the assistance of counsel. If there is no civil remedy in a United States Court for a wrongful imprisonment caused by a violation of the right to counsel, the Sixth Amendment right to counsel has been abolished.

A ruling against a civil remedy for Petitioner in this case hurts every body in our nation by abolishing the right to counsel and all other Sixth Amendment provisions, whereas a ruling that California, and/or Olney, Kaufman, Pangman, McGowan, and Cunan, and/or some other person is liable to Petitioner in these narrow circumstances of conviction, imprisonment, appellate reversal for violation of the right to counsel, subsequent dismissal or acquittal of all charges, affects only Petitioner because there have been few reversals for violation of the right to counsel in our state courts since Gideon v Wainwright in 1963, the vast majority of these were reconvicted at a retrial, and, if this Court rules Petitioner has a right to civil remedy in this case, these narrow circumstances of imprisonment, reversal of conviction for a violation of the right to counsel, and subsequent dismissal or acquittal of all charges will happen even more rarely, if ever, in the future.

CONCLUSION

This Court has the duty to enforce Petitioner's right to counsel by holding Olney, Kaufman, Pangman, Cunan, and/or McGowan, and/or California, and/or Plumas County, and/or some other person liable to Petitioner.

The Sixth Amendment of the Constitution, common sense, equity, nature and civilization demand a civil remedy for Petitioner rather than immunity for the court officers, California and all other persons.

The way to balance justice with judicial, prosecutorial and state immunity where there has been a wrongful imprisonment caused by a violation of the right to counsel, and the court officers who violated the right to counsel have judicial and prosecutorial immunity, is to hold the state liable to the injured party for a civil remedy in a court of law.

A civil remedy in a court of law for the individual who has been intentionally, wrongfully, grievously injured in extremely narrow circumstances by state judges and prosecutors is far more important than immunity for the state, the judges and the prosecutors.

That remedy has already been provided by Congress in Title 42 U.S.C., Sections 1983 and 1985. Petitioner requests that this Supreme Court take judicial notice of the wording of these two statutes, which clearly states in 1983 that <u>every</u> person shall be liable to the injured party and in 1985 that the injured party shall have an action at law for the recovery of damages against <u>any</u> of the conspirators.

Title 42 U.S.C. Section 1983

Every person who, under color or any statute of any State subjects any citizen of the United States to the deprivation of any rights secured by the Constitution shall be liable to the party injured in an action at law.

Title 42 U.S.C. Section 1985

If two or more persons in any State conspire for the purpose of depriving any person of the equal protection of the laws, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, the party so injured or deprived may have an action for recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators.

Congress said what they meant and meant what they said. This wording includes prosecutors and judges. If Congress had intended to exclude prosecutors and judges, they could and would have included the phrase "except prosecutors and judges" in 1983 and 1985.

Petitioner further requests that this Supreme Court take judicial notice, that debates in both houses of Congress prove that the senators and representatives were aware that the wording of 1983 and 1985 included judges.

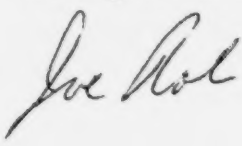
Title 42 U.S.C. Sections 1983 and 1985, include both judges and prosecutors, convoluted sophistry of prior Supreme Courts notwithstanding. Petitioner requests that this Supreme Court reconsider 1983 and 1985 from the perspectives of Congressional wording and intent and equity.

PRAYER FOR RELIEF

Petitioner requests that this Court rule that Kaufman, Olney, Pangman, Cunan and McGowan, or California, or Plumas County, or some other person is liable to Petitioner under United Sates Code Title 42, Sections 1983 and 1985, or some other law.

I declare under penalty of perjury that the foregoing is true and correct.

Date: May 30, 2007 Joseph Robinson



PROOF OF SERVICE

I, Joseph Robinson, hereby declare that I am over the age of 18 years and that I am a party to within entitled cause of action, and, further, that on the date below I served the following documents with this proof of service by post paid first-class United States Mail in a sealed envelope.

PETITION FOR WRIT OF CERTIORARI
APPENDIX: STATEMENT OF FACTS

To the following addresses:

State of California
California Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

William Pangman
Sierra County Superior Court
P.O. Box 476
Downieville, CA 95936

Garrett Olney
Plumas County Superior Court
520 Main Street; Room 104
Quincy, CA 95971

Ira Kaufman
Plumas County Superior Court
520 Main Street; Room 304
Quincy, CA, 95971

Porter, Scott, Weiberg & Delehant
Attention: Terrence Cassidy
P.O. Box 255428
Sacramento, CA 95865

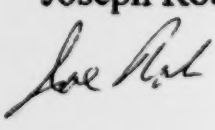
Supreme Court of the United States
Office of the Clerk
1 First Street, N.E.
Washington, DC 20543

Originals and
Forty Copies

Further, I declare under penalty of perjury that the foregoing is true and correct and that the aforementioned documents were mailed as above described.

Date: May 30, 2007

Joseph Robinson



(2)

Supreme Court, U.S.

Number: 06-1683 MAY 20 2007

OFFICE OF THE CLERK

IN THE
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Joseph Robinson,
PETITIONER
v.
California, Plumas County, Jeff Cunan, Garrett Olney, Ira Kaufman, William Pangman, and Gary McGowan,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI – DISTRICT AND CIRCUIT COURT OPINIONS AND ORDERS

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TABLE OF CONTENTS

DISTRICT AND CIRCUIT COURT OPINIONS AND ORDERS

United States District Court for the Eastern District of California

1. FINDINGS AND RECOMMENDATIONS 10/21/05.....3
2. ORDER - 11/22/05.....12

United States Court of Appeals for the Ninth Circuit

1. MEMORANDUM - 2/28/07.....14
2. ORDER - 5/7/07.....17
(Denial of petition for rehearing en banc)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Joseph Robinson, CIV.S-04-1888 GEB DAD PS

Plaintiff,

v. FINDINGS AND RECOMMENDATIONS

STATE OF CALIFORNIA, et al.,

Defendants.

_____/

This action Came before the court on October 14, 2005, for hearing on the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative summary judgment, filed on behalf of defendants Plumas County; Greg Hagwood; James Reichle; Jeff Cunan; and Gary McGowan.[1] Plaintiff, proceeding pro se, appeared telephonically on his own behalf at the hearing on the motion. Kristina M. Hall appeared on behalf of defendants. For the reasons explained below, the undersigned will recommend that defendants' motion to dismiss be granted and plaintiff's second amended complaint be dismissed without further leave to amend. [2]

[1] These are the only remaining defendants in this action. Defendants State of California; Ira Kaufman; William Pangman; Garrett Olney; and Doug Prouty have been dismissed by earlier order of the district court. (See Order filed January 21, 2005.)

LEGAL STANDARDS

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the sufficiency of the complaint. See North Star Int'l v. Arizona Corp. Comm'n. 720 F.2d 578, 581 (9th Cir. 1983). Dismissal of the complaint or of any claim within it " can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balisteri v. Pacifica Police Dept, 901 F.2d 696, 699 (9th Cir. 1990); See also Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984).

In considering a motion to dismiss for failure to state a claim, the court accepts as true all material allegations in the complaint and construes those allegations, as well as the reasonable inferences that can be drawn from them, in the light most favorable to the plaintiff. See Hishon v King & Spalding, 467 U.S. 69,73(1984); Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). In a case where the plaintiff is pro se, the court has an obligation to construe the pleadings liberally. Bretz v. Kelman, 773 F.2d 1026. 1027 n.1 (9th Cir. 1985) (en banc). However, the court's liberal interpretation of a pro se complaint may not supply essential elements of a claim that are nor pled. Pena v. Gardner, 976 F.2d 469, 471, (9th Cir. 1992); Ivev v. Bd. Of Regents of Univ. of Alaska, 673 F2.2d 266, 268, (9th Cir. 1982).

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[2] As indicated on the record during the hearing, the privilege of appearing telephonically in this matter is revoked as to plaintiff, who is now required to personally appear at any future proceedings.

ANALYSIS

This action arises from Plaintiff Joseph Robinson's conviction, following a jury trial in the Plumas County Municipal and Superior Court, and his imprisonment for possession of marijuana for sale, transporting marijuana and offering to sell, furnish or give away marijuana, all while being armed with a firearm. In this civil action, plaintiff is challenging thiose criminal proceedings on a variety of purported constitutional grounds. [3]

As a preliminary matter, in his written opposition and at the hearing on the motion, plaintiff voluntarily requested that defendants District Attorney James Reichle and Detective Greg Hagwood be dismissed from this action.Defendants do not object to Plaintiff's request. Therefore, the court will recommend that

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[3] The California Court of Appeal for the Third Appellate District reversed the judgment of conviction, finding that plaintiff did not waive his right to the assistance of counsel at his preliminary examination and was erroneously denied appointed counsel at that preliminary examination. The undersigned has taken judicial notice of the unpublished decision of the Court of Appeal attached to plaintiff's request for judicial notice. Pursuant to Federal Rule of Evidence 201, the court may take judicial notice of its own files and state court records. See Burbank-Glendale-Pasdena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998). "When a court takes judicial notice of another court's opinion, it may do so 'not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to a reasonable dispute over its authenticity.'" Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001) (quoting Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd., 181 F.3d 410, 426-27 (3rd Cir. 1999)).

defendants Reichle and Hagwood be dismissed from this action pursuant to plaintiff's voluntary request. See Fed. Rules Civ. P. 41(a)(2).

The remaining defendants are Plumas County and deputy district attorneys Jeff Cunan and Gary McGowan. Plaintiff's second amended complaint continues to allege that defendants wrongfully convicted plaintiff in violation of his constitutional rights. However, as was the case with plaintiff's amended complaint, it appears that the second amended complaint does not contain a short and plain statement as required by Federal Rule of Civil Procedure 8(a)(2). As plaintiff has been advised previously, while the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim with at least some degree of plainly and succinctly. Jones v. Community Redev. Agency, 733 F2.d 646, 649 (9th Cir. 1984). Plaintiff is required to allege with at least some degree of particularity overt acts which defendants engaged in that support plaintiff's claim. Id.

The second amended complaint, consisting of six "counts", fails to meet these requirements. The first and second counts are for "Conspiracy to Wrongfully convict and Imprison Plaintiff" and for "Wrongful Conviction and Imprisonment", respectively. The third and fourth counts are for "Conspiracy to Violate Plaintiff's Right to be Free from Unreasonable Search and Seizure" and "Violation of Plaintiff's Right to be Secure Against Unreasonable Search and Seizure", respectively. The fifth and sixth counts are for

"Conspiracy to Vbiolate Plaintiff's Right to the Assistance of Counsel", and "Violation of Plaintiff's Right to the Assistance of Counsel", respectively. However, the allegations under those headings are conclusory and sprinkled with references to the denial of "reasonable bail", the denial of the right to "present a defense to the jury at trial", violations of "due process rights", and so on. Thus, just like polaintiff's earlier pleadings, the precise nature of the attempted claims in the second amended complaint is unclear. As such, the second amended complait's allegations do not amount to a short, plain statement of acclaim showing that plaintiff is entitled to relief. See Fed. R. Civ. P. 8(a)(1).

The attachment of the 23-page, 611-paragraph, "statement of facts" to plaintiff's second amended complaint does not impact the undersigned's analysis in this regard. That statement is not "short and plain". The order dismissing the amended complaint with leave to amend expressly admonished plaintiff that a similar 24-page. 593-paragraph declaration did not amount to a short and plain statement of a claim. Further, like the rest of the second amended complaint, the attached statement of facts confusingly contains numerous allegations regarding defendants whom were long ago dismissed from this case.

Even if the second amended complaint were found to comply with the requirements of Rule 8, it also clearly fails to state a cognizable claim. While the second amended complaint makes reference to 42 U.S.C. Section 1983 (second Am. Compl. At 2), like the

amended complaint it still does not allege how the conduct complained of has resulted in a deprivation of a right, privilege or immunity secured by the Constitution or federal law by a person acting under color of state law. L.W. v. Grubbs, 974 F.2d 119, 120 (9th Cir. 1992); Lopez v. Dept. of Health /services, 939 F.2d 881, 883 (9th cir. 1991). (See Order filed June 30, 2005, at 5-6.) Additionally, as discussed at the hearing on the motion, the conduct attributed to defendants Cunan and McGowan by plaintiff occurred entirely in the course of their appearances as prosecutors assigned to plaintiff's case in the state court criminal proceedings. The fact that the state trial court erred as a matter of state law by allowing prosecutors to participate in hearings with respect to appointment of counsel, thereby prohibiting plaintiff from presenting a confidential financial statement at those hearings, does not effect that conclusion. Regardless of the state trial court's errors, the prosecutors were performing functions "intimately associated with the judicial phase of a criminal proceeding". Imbler v. Pachtman, 424 U.S. 409, 430 (1976). A prosecutor is entitled to absolute immunity from a civil action for damages under Section 1983 in connection with such conduct. See Burns v. Reed, 500 U.S. 478, 486 (1991); Imbler, 424 U.S. at 431; KRL v. Moore, 384 F.3d 1105, 1110-13 (9th Cir. 2004).

Finally, as to defendant Plumas County the second amended complaint still fails to sufficiently allege a claim of municipal liability arising from any policy of Plumas County. [4] See Monell v. Department of Social Servs., 436 U.S. 658, 690-91 (1978); Gillette v.

Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992). In this regard, plaintiff has again failed to even allege in conclusory fashion that the injury complained of was the consequence "of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy...." Monell, 436 U.S. at 694. Each of these deficiencies also existed in the amended complaint and plaintiff has been unable to correct them.

The undersigned also recognizes that the second amended complaint makes reference to 42 U.S.C. Section 1985(3). (See Second Am. Compl. At 2.) However, plaintiff has failed to allege specific facts from which a conspiracy between defendants could be inferred. See Olsen v. Idaho State Bd. Of Medicine, 363 F.3d 916, 929-30 (9th Cir. 1989. Additionally, plaintiff's failure to allege a section 1983 deprivation of rights precludes a Section 1985 conspiracy claim predicated on the same allegations. See Olsen, 363 F.3d at 930; Caldeira v. County of Kauai, 866 F.2d

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[4] Further, it would appear that to the extent that plaintiff is attempting to state a Monell claim against the County of Plumas, it is based solely on the actions of District Attorney Reichle. However, in electing to prosecute a district attorney in California acts on behalf of the state, not the county. Weiner v. San Diego County, 210 F.3d 1025, 1031 9th Cir 2000) ("We conclude that a California district Attorney is a state officer when deciding whether to prosecute an individual."); see also Pitts v. County of Kern, 17 Cal. 4th 340 (1998). State officials are not subject to suit under section 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Accordingly, the County of Plumas is not subject to liability under Section 1983 for the actions of District Attorney Reichle.

1175, 1182 (9th Cir. 1989). The second amended complaint must be dismissed for these reasons as well.

Because of these deficiencies, plaintiff's second amended complaint must be dismissed. Granting leave to amend would be futile in light of the nature of the deficiencies noted above. See Schmier v. United States court of Appeals for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002). Therefore, the undersigned will recommend that the second amended complaint be dismissed without further leave to amend.

CONCLUSION

Accordingly, it is hereby recommended that:

1. Defendants Reichle and Hagwood be dismissed from this action pursuant to plaintiff's voluntary request. See Fed R. Civ. P. 41(a)(2);
2. the pending motion to dismiss pursuant to Rule 12(b)(6) be granted as to defendants Plumas County, Jeff Cunan and Gary McGowan; and
3. Plaintiff's second amended complaint be dismissed without further leave to amend.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. Section 636(b)(1). Within ten (10) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that

failure to file objections within the specified time may waive the right to appeal the District Court's order. See Martinez v. Y1st, 951 F2d 1153 (9th Cir. 1991).

DATED: October 21, 2005

Dale A. Drozd
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Joseph Robinson, 2:04-1888 GEB DAD PS

Plaintiff,

ORDER

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

_____/

Plaintiff, proceeding pro se, filed the above-entitled action. The matter was referred to a United States Magistrate Judge pursuant to Local Rule72-302(c)(21).

On October 24, 2005, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within ten days. Plaintiff has filed objections to the findings and recommendations and defendants have filed a reply.

In accordance with the provisions of 28 U.S.C. Section 636(b)(1)(C) and Local Rule 72-304, this court conducted a de novo revies of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed October 24, 2005, are adopted in full;
2. Defendants Reichle and Hagwood are dismissed from this action pursuant to plaintiff's voluntary request. See Fed R. Civ. P. 41(a)(2);
3. the pending motion to dismiss pursuant to Rule 12(b)(6) is granted as to defendants Plumas County, Jeff Cunan and Gary McGowan;
4. Plaintiff's second amended complaint is dismissed without further leave to amend; and
5. The clerk is directed to close this case.

Dated: November 22, 2005

Garland E. Burrell, Jr.
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH ROBINSON,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 05-17291

D.C. No. CV-04-01888-GED/DAD

MEMORANDUM*

Appeal from the United States District Court
For the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted February 20, 2007**

* This disposition is not appropriate for publication and is not prededent except as provided by 9th Cor. R. 36-3.

** Robinson's request for oral argument is denied because the panel unanimously finds tis case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: BEEZER, FERNANDEZ, AND McKEOWN, Circuit Judges.

Joseph Robinson appeals pro se from the district court's judgment in favor of defendants in his 42 U.S.C. Section 1983 action alleging California state judicial and prosecutorial defendants violated his constitutional rights during his criminal prosecution. We have jurisdiction under 28 U.S.C. Section 1291. we review de novo, *Botello v. Gammic*, 413 F.3d 971, 975 (9th cir. 2005)(absolute immunity to public officials); *Nat'l Audobon Soc'y, Inc v. Davis*, 307 F.3d 835, 846 (9th Cir. 2002) (Eleventh Amendment immunity), and we affirm.

The district court properly dismissed Robinson's claims against the state court judges, because they are entitled to absolute immunity for judicial actions taken within their jurisdiction. *See Olsen v. Idaho State Bd. Of Me.*, 363 F.3d 916, 922-33 (9th Cir. 2004). Likewise the district court properly concluded the prosecutors were entitled to absolute immunity, because they were performing functions "intimately associated with the judicial phase" of Robinson's criminal trial. *See krl v. Moor*, 384 F.3d 1105, 1110-11 (9th Cir. 2004) (internal Quotations and citations omitted).

The district court also properly failed to adequately allege that the defendants conspired to violate his civil rights, *see Olsen*,363 F.3d at 929, or that Plumas County maintained a policy or custom of violating civil rights, *see Gilette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992) (per curiam).

The district court properly dismissed Robinson's claims against the State of California as barred by the Eleventh Amendment. *See Franceschi v. Schwartz*, 57 F.3d 828,831 (9th Cir. 1995).

Robinson's remaining contentions lack merit.

AFFIRMED

FILED

February 28, 2007

Cathy A Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH ROBINSON,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 05-17291

D.C. No. CV-04-01888-GED/DAD
Eastern California
(Sacramento)

ORDER

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and for rehearing en banc are denied.

FILED

May 7, 2007

Cathy A Catterson, Clerk
U.S. Court of Appeals

PROOF OF SERVICE

I, Joseph Robinson, hereby declare that I am over the age of 18 years and that I am a party to within entitled cause of action, and, further, that on the date below I served the following documents with this proof of service by post paid first-class United States Mail in a sealed envelope.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI - LOWER COURT OPINIONS

To the following addresses:

State of California
California Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

William Pangman
Sierra County Superior Court
P.O. Box 476
Downieville, CA 95936

Garrett Olney
Plumas County Superior Court
520 Main Street; Room 104
Quincy, CA 95971

Ira Kaufman
Plumas County Superior Court
520 Main Street; Room 304
Quincy, CA, 95971

Porter, Scott, Weiberg & Delehant
Attention: Terrence Cassidy
P.O. Box 255428
Sacramento, CA 95865

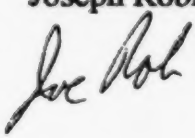
Supreme Court of the United States
Office of the Clerk
1 First Street, N.E.
Washington, DC 20543

Originals and
Forty Copies

Further, I declare under penalty of perjury that the foregoing is true and correct and that the aforementioned documents were mailed as above described.

Date: June 15, 2007,

Joseph Robinson



59

Supreme Court, U.S.
FILED
MAY 29 2007
OFFICE OF THE CLERK

Number: (3) 06-1683

IN THE
SUPREME COURT OF THE UNITED STATES

Joseph Robinson,
PETITIONER

v.

California, Plumas County, Jeff Cunan, Garrett Olney, Ira Kaufman, William Pangman, and Gary McGowan,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI – STATEMENT OF FACTS THAT SHOW INTENT, MALICE AND CONSPIRACY

Joseph Robinson
10608-B Bethel Road
Frederick, MD 21702
josephrob@earthlink.net

The following STATEMENT OF FACTS shows that Respondents Olney, Kaufman, Pangman, Cunan and McGowan violated Petitioner's right to counsel to wrongfully convict and imprison Petitioner, and that they acted knowingly, willingly and maliciously with agreement and intent to wrongfully convict and imprison Petitioner.

STATEMENT OF FACTS

1. On Wednesday, October 27, 2000, Plumas County Sheriff Len Gardner arrested Robinson.

2. On Friday, September 29, 2000 Plumas County District Attorney James Reichle and Prosecutor Jeff Cunan filed a complaint charging Robinson with cultivation and possession-for-sale of marijuana.
3. Robinson appeared in court for a bond hearing.
4. Theiler was the judge.
5. Robinson requested a bond hearing.
6. Theiler set Robinson's could bond hearing for Monday, October 2 at 3 P.M.
7. Over the weekend, Robinson arranged for three prominent local citizens to appear and testify for Robinson at the bond hearing on Monday, October 2.

8. On Monday, October 2, 2000 Robinson appeared in court for a bond hearing.
9. Robinson's three witnesses made the 45-minute trip from the Indian Valley to Quincy to testify for Robinson in the scheduled 3 P.M. bond hearing.
10. Kaufman was the judge.
11. Cunan was the prosecutor.

12. Kaufman knew that Robinson was present in court for a 3 P.M. bond hearing.
13. Cunan knew that Robinson was present in court for a 3 P.M. bond hearing.
14. Kaufman knew that Robinson's three witnesses were present and ready to testify for Robinson at the scheduled 3 P.M. bond hearing.
15. Cunan knew that Robinson's three witnesses were present and ready to testify for Robinson at the scheduled 3 P.M. bond hearing.
16. Kaufman and Cunan delayed Robinson's case until the end of the day.
17. When Kaufman and Cunan finally called Robinson's case, Robinson informed Kaufman that Robinson was ready to proceed with the scheduled bond hearing.
18. Kaufman informed Robinson that Kaufman had the duty to assure that Robinson obtained all of Robinson's rights and that Robinson got a fair trial.
19. Kaufman said he would appoint an attorney for Robinson if Robinson desired counsel.
20. Kaufman opined that it was advantageous for a criminal defendant to have counsel sooner rather than later.
21. Kaufman informed Robinson that Kaufman had practiced as a criminal defense lawyer for over twenty-five years in Los Angeles, Plumas County and all over California and that Kaufman had never seen any body represent themselves as well as an attorney.
22. Kaufman informed Robinson that Robinson had the right to be represented by an attorney at all stages of the proceedings.
23. Kaufman informed Robinson that if Robinson could not afford an attorney Kaufman would appoint an attorney for Robinson at no cost.
24. Kaufman informed Robinson that Robinson had the right to subpoena witnesses.
25. Kaufman informed Robinson that Robinson had the right to present evidence in court in defense of the charges.
26. Kaufman recommended that Robinson have an attorney.

27. Kaufman advised that Robinson have an attorney.
28. Cunan did not object to the foregoing opinion, information, recommendation and advice.
29. Robinson informed Kaufman that Robinson wished the assistance of counsel so that Robinson could retain control over the policy decisions of the case.
30. Kaufman offered to appoint Attorney Dale Wood to represent Robinson and make all of the policy decisions for Robinson.
31. Robinson requested an immediate OR hearing.
32. Kaufman informed Robinson that appointing counsel for Robinson was Kaufman's first priority.
33. Robinson agreed to accept counsel if Robinson could proceed with the OR hearing immediately.
34. Kaufman informed Robinson that Kaufman was not inclined to release Robinson on his own recognizance.
35. Robinson repeated Robinson's request for an OR hearing.
36. Kaufman provided Robinson with a copy of Robinson's OR/BAIL RECOMMENDATION REPORT.
37. Kaufman recessed Robinson's case.
38. When Kaufman resumed Robinson's case, Kaufman inquired what Robinson wanted.
39. Robinson informed Kaufman that Robinson wished to proceed with his OR hearing.
40. Kaufman inquired whether Robinson wished to proceed with the OR hearing.
41. Robinson said, "Yes".
42. Kaufman again offered to appoint an attorney to represent Robinson.
43. Robinson again requested the assistance of counsel.
44. Kaufman refused to appoint an attorney to assist Robinson.
45. Kaufman offered to appoint an attorney to represent Robinson.
46. Kaufman informed Robinson that Kaufman wanted to delay Robinson's OR hearing until Friday, October 6, 2004 so that Wood could be present.
47. Robinson informed Kaufman that Robinson wished to proceed with an OR hearing.

48. Kaufman inquired whether Robinson wished Kaufman to appoint counsel for Robinson.
49. Kaufman stated again that Wood would be in court on Friday.
50. Kaufman opined that Wood is an excellent attorney.
51. Robinson agreed to accept Wood as the attorney of record if Robinson could have an immediate OR hearing without Wood.
52. Kaufman appointed Wood to be the attorney of record in Robinson's case and agreed that Robinson could proceed with the scheduled OR hearing without Wood.
53. Cunan did not object.
54. Kaufman appointed Wood for Robinson without any consideration of finances.
55. Cunan did not object.
56. Kaufman failed to contact Wood.
57. Kaufman failed to provide Robinson with a phone number to contact Wood.
58. Kaufman again informed Robinson that Kaufman was inclined to keep Robinson in jail and not release Robinson on OR.
59. Robinson requested that Kaufman provide for Robinson the information upon which Kaufman would base his decision.
60. Kaufman stated that Hagwood provided "information".
61. Kaufman stated that he signed the search warrant for Robinson's home.
62. Kaufman stated that he possessed a copy of the affidavit in support of that warrant.
63. Kaufman stated that Hagwood requested that Kaufman deviate from the bail schedule and set Robinson's bail at $500,000 instead of the $50,000.
64. Kaufman stated that Hagwood provided more "information".
65. Robinson requested that Kaufman provide Hagwood's "information" for Robinson.
66. Kaufman stated that he did not have Hagwood's "information" with him.

67. Kaufman stated that Kaufman could not remember Hagwood's "information".
68. Kaufman stated that Kaufman wanted to deal with the facts.
69. Robinson stated that Robinson knew of no fact that would preclude his OR.
70. Kaufman said "Okay".
71. Cunan said nothing.
72. Robinson informed Kaufman and Cunan of the three criteria California Penal Code Section 1275 states as relevant to the amount of bail.
73. Robinson informed Kaufman and Cunan that, in the setting of bail, there should be no suggestion of revenue for the government or punishment to the defendant.
74. Robinson informed Kaufman and Cunan that the primary purpose of bail is to ensure a defendant will attend court when his presence is required.
75. Robinson informed Kaufman and Cunan that the bail shall not be unreasonable.
76. Robinson informed Kaufman and Cunan that Robinson had a declaration that addressed the issues related to the setting of bail.
77. Kaufman interrupted Robinson by requesting input from Cunan.
78. Cunan stated that the $500,000 bail was "unreasonable".
79. Cunan requested a $50,000 bail for Robinson.
80. Kaufman requested input from Robinson.
81. Robinson informed Kaufman and Cunan that any bail above zero is unreasonable in Robinson's case.
82. Kaufman disagreed with Robinson.
83. Kaufman did not state any fact or present any evidence to show that any bail was required to secure Robinson's presence in court.
84. Cunan did not state any fact or present any evidence to show that any bail was required to secure Robinson's presence in court.
85. Robinson requested that Kaufman withhold Kaufman's judgment until after Robinson's bail hearing.

86. Kaufman stated: "We're not going to hold a bail hearing today."
87. Robinson objected on the ground that Robinson's three witnesses had traveled from the Indian Valley (90 minute round trip) and waited since about 2:30 PM to testify for Robinson.
88. Kaufman refused to allow Robinson to have a bond hearing.
89. Robinson objected on the grounds that Robinson was entitled to a bond hearing within five days of arrest. (This was the end of the fifth day.)
90. Kaufman requested that Cunan respond.
91. Cunan stated: "We're having the hearing today."
92. Robinson said: "Thank you."
93. Kaufman said: "We're not going through the whole hearing today."
94. Cunan said: "The hearing has begun."
95. Kaufman said: "The hearing has begun."
96. Kaufman immediately ended the hearing by deciding to set bail at $50,000 and setting Robinson's case off until Friday, October 6, 2000, at 1000 hours.
97. Robinson requested an opportunity to be heard.
98. Kaufman refused to allow Robinson to have an opportunity to be heard.
99. Robinson requested the opportunity to make an objection on the record.
100. Kaufman allowed Robinson to state an objection for the record.
101. Robinson objected to Kaufman and Cunan that Robinson has not had an OR/bond hearing.
102. Robinson informed Kaufman and Cunan that, at Robinson's previous court appearance, when Robinson requested a bond hearing, Judge Theiler had scheduled Robinson's bond hearing for today.
103. Robinson informed Kaufman and Cunan that Robinson was prepared to proceed with Robinson's bond hearing.
104. Kaufman again refused to allow Robinson to have a bond hearing.

105. Robinson accused Kaufman and Cunan of being punitive.
106. Kaufman said: "It's not punitive".
107. Robinson informed Kaufman and Cunan that remaining in jail without a bond hearing was hard on Robinson and that there was no reason for it.
108. Kaufman dropped Robinson's case and called another matter.
109. When Kaufman resumed Robinson's case, Kaufman stated that Kaufman knew Robinson's witnesses.
110. Kaufman requested that Robinson's three witnesses agree to return and continued Robinson's bond hearing until 11 A.M. the next day.
111. Kearns and Tucker agreed to return at 11 A.M. the next day.
112. Hamblin stated that he had a prior engagement.
113. Kaufman and Cunan stipulated that Hamblin could appear by letter.
114. Robinson requested that Kaufman produce Robinson's accuser to testify for Robinson.
115. Kaufman refused to produce Robinson's accuser.
116. Wood refused the appointment.
117. Wood failed to visit Robinson in jail.
118. Wood failed to contact Robinson.

119. On October 3, 2000 Robinson appeared in court for his bond hearing.
120. Kaufman was the judge.
121. Cunan was the prosecutor.
122. Two of Robinson's witnesses (Kearns, Tucker) were present.
123. Robinson's third witness (Hamblin) was accounted for through letter.
124. Wood was neither present nor accounted for.
125. Cunan failed to inform Robinson that Wood had refused the appointment.

126. Kaufman failed to inform Robinson that Wood had refused the appointment.

127. Wood failed to inform Robinson that Wood had refused the appointment.

128. No body in Plumas County ever informed Robinson that Wood had refused the appointment.

129. Robinson discovered that Wood refused the appointment in a 2004 telephone conversation with a person who answered Wood's business phone: (530) 587-3450.

130. Cunan objected to proceeding with Robinson's bond hearing without Attorney of Record Wood.

131. Kaufman agreed with Cunan that Robinson could not have a bond hearing without Wood.

132. The true purpose of Kaufman and Cunan for appointing Wood to represent Robinson as the attorney of record was to prevent Robinson from having a bond hearing.

133. Robinson qualified for an own recognizance release.

134. Robinson required a fair and immediate bond hearing to obtain a release on his OR.

135. Robinson dismissed Wood so that Robinson could have a bond hearing immediately.

136. Kaufman advised Robinson to have the assistance of counsel in this type of case.

137. Kaufman said that it is a very serious and complex case.

138. Kaufman said that it might be a "case of first impression in the state of California".

139. Kaufman said there might be some "interesting and articulate and intricate legal issues."

140. Kaufman said that Robinson would benefit from the assistance of counsel.

141. Robinson informed Kaufman and Cunan that Robinson would like to have the assistance of counsel.

142. Robinson said that Robinson did not want an attorney to be appointed as attorney of record.

143. Kaufman informed Robinson that Robinson had to "meet certain financial requirements" to qualify for appointed counsel.

144. Kaufman stated that Robinson had not filled out a financial declaration.
145. Kaufman stated that, because Robinson was in custody, Kaufman assumed Robinson could not afford to pay for counsel.
146. Kaufman inquired whether Robinson wanted counsel or wanted to represent himself.
147. Robinson responded: "I always told you I wanted to represent my self."
148. Kaufman said: "I know."
149. Kaufman admitted that he knew that Robinson was really interested in an OR hearing.
150. Kaufman admitted that he had talked Robinson into an attorney the day before.
151. Kaufman said: "Let's proceed."
152. Kaufman informed Robinson that Robinson had "certain Constitutional rights".
153. Kaufman informed Robinson that Robinson had the right to be represented by an attorney at all the stages of the proceedings.
154. Kaufman informed Robinson that, if Robinson could not afford to hire an attorney, the court would appoint an attorney for Robinson at no cost.
155. Kaufman informed Robinson that Robinson had the right to present evidence in court in defense of the charges.
156. Kaufman warned Robinson of the dangers of proceeding with out an attorney.
157. Kaufman inquired: "So, you want to represent yourself, Mr. Robinson?"
158. Though Robinson had already informed Kaufman more than once that Robinson would like to retain control over the case and have the assistance of counsel, Robinson wished an immediate bond hearing, so Robinson responded: "Yes".
159. Kaufman and Cunan finally allowed Robinson to proceed with Robinson's bond hearing.
160. Jim Hamblin's letter was entered into evidence.
161. Hamlin is Chief of the Indian Valley Fire and Rescue.

162. Robinson was a member of the volunteer fire department.

163. Hamblin's letter was very favorable to Robinson's reliability and character.

164. Delma Kearns was Robinson's real estate agent.

165. Delma Kearns testified that she has personal knowledge that Robinson is reliable and that Robinson has a reputation for reliability, honesty and integrity.

166. Ken Tucker owns and manages the grocery store in Greenville, California and is an officer of the Indian Valley Fire and Rescue.

167. Ken Tucker testified that Robinson has a reputation for honesty, integrity, dependability and reliability.

168. Kaufman stated that: "The reason for the point count system is to try to bring more consistency into the system so that someone who faces the same type of charge with the same type of record gets the same bail/OR."

169. Robinson testified to facts that showed that Robinson's marijuana was for a lawful medical purpose.

170. Robinson testified to facts that showed that Robinson is not a flight risk.

171. Robinson testified to facts that showed that Robinson had no significant criminal history.

172. Robinson testified to facts that showed that Robinson has a history of numerous timely California court appearances without failure to appear.

173. Kaufman and Cunan knew that, according to the guidelines used by Plumas County, Robinson qualified for an unconditional release on Robinson's own recognizance.

174. Cunan presented no evidence that Robinson was a flight risk.

175. Cunan presented no evidence that Robinson was a danger to the community.

176. Cunan presented no evidence that justified any bond.

177. Cunan presented no evidence whatsoever.

178. Cunan requested that Kaufman charge Robinson a bail to get out of jail.

179. Cunan did not state any lawful reason for the bail.

180. Kaufman and Cunan agreed to charge Robinson with a $50,000 bail to get out of jail.

181. Kaufman failed to state the facts upon which Kaufman relied to make the determination that Robinson did not qualify for an OR release.

182. Kaufman failed to state the facts upon which Kaufman relied to make the determination that $50,000 was a reasonable bail.

183. Kaufman failed to state any lawful reason for his refusal to release Robinson on OR.

184. Kaufman and Cunan violated Robinson's right to a reasonable bail to further their conspiracy to wrongfully convict and imprison Robinson.

185. Robinson's family loaned Robinson $50,000 for the unreasonable bond.

186. Kaufman knew that Robinson's family was the source of Robinson's bond.

187. Cunan knew that Robinson's family was the source of Robinson's bond.

188. On October 12, 2000, the Plumas County Sheriff released Robinson from jail on a $50,000 bond.

189. After release from jail, when Robinson converted one of his three properties at a loss, after paying debts related to the other two properties, paying debts caused by the recent raid of Robinson's home, purchasing a vehicle necessary for Robinson to appear in court and paying miscellaneous other personal debts and obligations, Robinson had only enough money left for the bare necessities of life.

190. All of the attorneys with whom Robinson spoke demanded tens of thousands of dollars in advance to take Robinson's case.

191. Some estimates ran over $100,000 through trial.

192. Robinson could not afford to pay for the assistance of counsel.

193. With $50,000 of family money tied up in the unreasonable bond, Robinson's family was unwilling to loan Robinson more money for an attorney.

194. Robinson placed his other two properties on the market to pay for an attorney.

195. On October 18, 2000 Robinson met with District Attorney Reichle and Prosecutor Cunan in the office of the district attorney.

196. Robinson complained to Reichle and Cunan that Hagwood lied to obtain the search warrant.

197. Cunan said that he did not care whether Hagwood lied to obtain the warrant.

198. Robinson informed Reichle and Cunan that their inequity would cause a lawsuit.

199. Reichle and Cunan laughed and said that they could do whatever they want because they were immune from civil suit.

200. That same day, Robinson memorialized the meeting in a letter to Reichle.

201. In that letter Robinson stated that Reichle and Cunan had stipulated to the following:

a) Californians have the right to obtain and use marijuana for medical purposes.

b) Most Californians that have the right to obtain and use marijuana for medical purposes are not able to produce marijuana and do not have a caretaker that is able to produce marijuana.

c) Most Californians that have the right to obtain and use marijuana for a medical purpose must purchase marijuana to obtain marijuana.

202. In that letter Robinson stated that Reichle and Cunan took the position that it was lawful for Californians with physician recommendation to purchase marijuana for medical purposes, but it is a felony for any body to provide medical marijuana for people who have the lawful right to obtain and use marijuana for medical purposes pursuant to California statute and physician recommendation.

203. In that letter Robinson stated that, when Robinson informed Reichle and Cunan that their inequity would cause a lawsuit, Reichle and Cunan laughed, and Cunan said that he and Reichle were immune from judgment.

204. In Cunan's October 24, 2000 response to Robinson's October 18, 2000 letter, Cunan admits that he did laugh.

205. On October 25, 2000 California Medical Research Center Executive Dale Schafer and Physician Marion Fry signed declarations that showed Robinson intended to distribute his excess marijuana for a medical purpose.

206. On October 26, 2000, Robinson filed a written motion for the appointment of counsel, asserting that he could not afford an attorney.

207. On November 20, 2000, Robinson filed judicial notice of the law and facts that justified his cultivation for distribution of marijuana for a medical purpose.

208. On November 22, 2000 Robinson appeared in court to move the court to appoint counsel for Robinson.

209. Garrett Olney was the judge.
210. Gary McGowan was the prosecutor.
211. Olney knew that a defendant in a criminal case had the Constitutional right to the assistance of counsel.
212. Olney knew that Robinson was a defendant in a criminal case.
213. McGowan knew that a defendant in a criminal case had the Constitutional right to the assistance of counsel.
214. McGowan knew that Robinson was a defendant in a criminal case.
215. Before Robinson had an opportunity to speak, McGowan requested that Olney refuse to appoint counsel to assist Robinson.
216. McGowan said that he did not believe that Robinson would financially qualify for a court appointed attorney.
217. A defendant's financial declaration is confidential, not open to the prosecutor.
218. A defendant's hearing to determine financial eligibility for appointed counsel is confidential, not open to the prosecutor.
219. Olney knew that Robinson's financial declaration and hearing were confidential, not open to the prosecutor.
220. McGowan knew that Robinson's financial declaration and hearing were confidential, not open to the prosecutor.
221. Olney knew that Robinson had a right to a private hearing without McGowan.
222. McGowan knew that Robinson had a right to a private hearing without McGowan.
223. Olney allowed McGowan to remain in the courtroom during the hearing upon the issue of Robinson's financial eligibility for appointed counsel.
224. McGowan chose to remain in the courtroom during the hearing upon the issue of Robinson's financial eligibility for appointed counsel.
225. McGowan remained in the courtroom to conspire with Olney to violate Robinson's right to counsel.
226. McGowan was not in his prosecutorial capacity when he remained in the courtroom.

227. McGowan was in his individual capacity when he took part against Robinson in the hearing on Robinson's financial eligibility for appointed counsel.
228. Olney and McGowan agreed to violate Robinson's right to the assistance of counsel.
229. Olney asked McGowan for input.
230. McGowan participated in the hearing on Robinson's financial eligibility for appointed counsel.
231. McGowan argued that Robinson did not financially qualify for appointed counsel.
232. McGowan did not present any evidence.
233. Olney required Robinson to complete the confidential financial declaration in front of McGowan.
234. Olney interrogated Robinson upon financial matters in front of McGowan.
235. Robinson informed Olney and McGowan that Robinson could not afford an attorney.
236. Robinson presented plausible explanation and argument relating to private counsel's lack of interest in the case.
237. According to California law, the test of indigence is whether a private attorney would be interested in representing a defendant considering the defendant's present economic circumstances.
238. Olney knew the foregoing test of indigence.
239. McGowan knew the foregoing test of indigence.
240. The evidence before Olney and McGowan clearly showed that Robinson met the foregoing test of indigence.
241. No evidence was presented that showed Robinson did not meet the foregoing test of indigence.
242. Olney knew that Robinson met the foregoing test of indigence.
243. McGowan knew that Robinson met the foregoing test of indigence.
244. The lawful test for indigence is not whether a defendant is a pauper or on public assistance.
245. Olney knew that the lawful test of indigence was not whether a defendant is a pauper or on public assistance.

246. McGowan knew that the lawful test of indigence was not whether a defendant is a pauper or on public assistance.

247. Olney decided that Robinson had to be at the level of welfare to qualify for appointed counsel.

248. McGowan agreed with Olney that Robinson had to be at the level of welfare to qualify for appointed counsel.

249. The ruling agreed upon by Olney and McGowan, that Robinson had to be at the level of welfare to qualify for appointed counsel, is without support in California law.

250. The law provides for proceedings to recoup the cost of counsel if a defendant does have the ability to pay for part or all of the costs.

251. Olney knew that the law provides for proceedings to recoup the cost of counsel if a defendant does have the ability to pay part or all of the costs of counsel.

252. McGowan knew that the law provides for proceedings to recoup the cost of counsel if a defendant does have the ability to pay part or all of the costs of counsel.

253. Olney knew that, since Gideon v Wainwright in 1963, a defendant in a felony criminal case in state court had the absolute right to the assistance of counsel.

254. McGowan knew that, since Gideon v Wainwright in 1963, a defendant in a felony criminal case in state court had the absolute right to the assistance of counsel.

255. Olney and McGowan agreed not to appoint counsel for Robinson.

256. Olney knew that deprivation of the assistance of counsel would be bad for Robinson.

257. McGowan knew that deprivation of the assistance of counsel would be bad for Robinson.

258. Olney and McGowan refused to appoint an attorney to assist Robinson to further their conspiracy to wrongfully convict and imprison Robinson

259. On November 30, 2000 Robinson again filed a written motion requesting the assistance of counsel.

260. In this motion, Robinson objected to Olney's refusal to appoint counsel to assist Robinson.
261. In this motion, Robinson stated that he had no money to pay an attorney.
262. Robinson also filed a motion for O.R. release

263. On December 7, 2000 Robinson appeared in court for a preliminary hearing.
264. William Pangman was the judge.
265. Cunan was the prosecutor.
266. Pangman informed Robinson that Robinson had the Constitutional right to an attorney, and that, if Robinson could not afford an attorney, an attorney would be appointed for Robinson, and that, if it were ultimately determined that Robinson could afford some or all of the costs of legal counsel, then Robinson would have to reimburse the County of Plumas.
267. Cunan heard Pangman inform Robinson of his Constitutional right to the assistance of counsel.
268. Robinson informed Pangman and Cunan that Robinson could not afford an attorney.
269. Robinson requested that Pangman appoint an attorney for Robinson.
270. Pangman knew that Robinson had the Constitutional right to the assistance of counsel.
271. Cunan knew that Robinson had the Constitutional right to the assistance of counsel.
272. Pangman required that Robinson complete a financial statement to qualify for appointed counsel.
273. Pangman knew that Robinson's financial declaration was confidential, not open to the prosecutor.
274. Cunan knew that Robinson's financial declaration was confidential, not open to the prosecutor.
275. Pangman allowed Cunan to remain in the courtroom when Pangman required Robinson to complete the financial declaration to qualify for the appointment of counsel.

276. Cunan chose to remain in the courtroom when Pangman required Robinson to complete a financial declaration to qualify for appointment of counsel.

277. Cunan remained in the courtroom to conspire with Pangman to violate Robinson's right to the assistance of counsel.

278. Cunan was not in his prosecutorial capacity when he remained in the courtroom.

279. Cunan was acting in his individual capacity when he took part against Robinson in the hearing to determine Robinson's financial eligibility for appointed counsel.

280. Pangman asked Cunan for input.

281. Cunan argued against the appointment of counsel for Robinson.

282. Because Cunan was present, Robinson wrote N/A throughout the financial statement.

283. Robinson reiterated that he had no cash.

284. Robinson informed Pangman and Cunan that all the trial attorneys Robinson contacted wanted money in advance to take the case.

285. Robinson informed Pangman that no attorney was willing to take a lien against his property.

286. Cunan presented no evidence to show that Robinson could afford an attorney.

287. Pangman and Cunan agreed not to appoint an attorney for Robinson.

288. After the preliminary hearing began, Robinson continued to request a court appointed attorney.

289. Pangman and Cunan refused to provide an attorney to assist Robinson to further their conspiracy to wrongfully convict and imprison Robinson.

290. On December 14, 2000 before the second day of the preliminary hearing begun on December 7 and continued to December 14, Robinson filed a notice of agenda in which the first item was the appointment of an attorney to assist Robinson.

291. California Penal Code Section 866.5 states that the defendant in a criminal case may not be examined at the preliminary hearing unless the defendant is represented by counsel or has waived his right to counsel.

292. On December 14, 2000 Robinson appeared in court for the second day of preliminary hearing.
293. Pangman was the judge.
294. Cunan was the prosecutor.
295. Pangman knew California Penal Code Section 866.5 states that the defendant in a criminal case may not be examined at the preliminary hearing unless the defendant is represented by counsel or has waived his right to counsel.
296. Cunan knew California Penal Code Section 866.5 states that the defendant in a criminal case may not be examined at the preliminary hearing unless the defendant is represented by counsel or has waived his right to counsel.
297. Pangman knew that Robinson did not have an attorney.
298. Cunan knew that Robinson did not have an attorney.
299. Pangman knew that Robinson had requested appointment of an attorney.
300. Cunan knew that Robinson had requested appointment of an attorney.
301. Pangman knew that Robinson had not waived his right to the assistance of counsel.
302. Cunan knew that Robison had not waived his right to the assistance of counsel.
303. Pangman and Cunan agreed to examine Robinson at the preliminary hearing without counsel or a waiver of counsel, in direct, knowing, willing, and malicious violation of California Penal Code Section 866.5.
304. Robinson testified that he began growing marijuana for his personal use after the passage of the Compassionate Use Act in 1996, that, in 2000, he obtained written approval from a physician to use marijuana, that he was growing more marijuana than he and his coworkers could use, and that he planned to sell the excess marijuana through the

California Medical Research Center to provide marijuana for patients who could not grow it for themselves.

305. Pangman and Cunan examined Robinson at the preliminary hearing without an attorney to further their conspiracy to wrongfully convict and imprison Robinson.

306. The Plumas County Court lost jurisdiction over the person of Robinson when Cunan and Pangman failed and refused to complete the court for the preliminary hearing.

307. Kaufman, Pangman, Olney, Reichle, Cunan and Prouty knew that Cunan and Pangman failed to complete the court for the preliminary hearing.

308. Kaufman, Pangman, Olney, Reichle, Cunan and Prouty knew that failing to complete the court for the preliminary hearing deprived the court of jurisdiction over the person of Robinson.

309. Kaufman, Pangman, Olney and Cunan proceeded against Robinson without jurisdiction over the person of Robinson to further their conspiracy to wrongfully convict and imprison Robinson.

310. On December 15, 2000 Reichle and Cunan filed a complaint charging Robinson with cultivation, possession for sale, transportation and offer for sale of marijuana.

311. On December 20, 2000 Robinson appeared in court to request appointment of counsel and for a bond hearing.

312. Kaufman was the judge.

313. Cunan was the prosecutor.

314. Robinson moved the court to appoint counsel for Robinson.

315. Kaufman knew that Robinson had the Constitutional right to the assistance of counsel.

316. Cunan knew that Robinson had the Constitutional right to the assistance of counsel.

317. Kaufman knew that violation of Robinson's right to the assistance of counsel would be bad for Robinson.
318. Cunan knew that violation of Robinson's right to the assistance of counsel would be bad for Robinson.
319. Kaufman knew that Robinson had the right to make a confidential financial declaration not open to the prosecutor.
320. Cunan knew that Robinson had the right to make a confidential financial declaration not open to the prosecutor.
321. Kaufman allowed Cunan to remain in the courtroom.
322. Cunan chose to remain in the courtroom.
323. Cunan remained in the courtroom to conspire with Kaufman to violate Robinson's right to the assistance of counsel.
324. Cunan was not in his prosecutorial capacity when he remained in the courtroom.
325. Cunan was in his individual capacity when he remained in the courtroom.
326. Kaufman prejudicially indicated that he would refuse to appoint counsel for Robinson.
327. Kaufman stated two reasons for his prejudicial refusal to appoint counsel for Robinson.
328. Kaufman stated that he intended to refuse to appoint counsel for Robinson because Kaufman was not sure whether Robinson was truly indigent.
329. Kaufman said that the more important reason for his refusal to appoint counsel for Robinson was that Robinson was running a competent case, and Robinson was competent to continue, and Kaufman did not think an attorney would add anything, and would, in fact, be a detriment to Robinson.
330. There is no support in California law for Kaufman's refusal to appoint counsel because Robinson was competent to continue and Kaufman did not think an attorney would add anything, and would, in fact, be a detriment.
331. Kaufman offered Robinson an opportunity to be heard.
332. Robinson reiterated his request for the appointment of counsel.
333. Robinson began to state his reasons for that request.

334. Cunan interrupted Robinson.

335. Kaufman allowed Cunan to interrupt Robinson.

336. Cunan argued against the appointment of counsel for Robinson for financial reasons.

337. Kaufman and Cunan agreed that Robinson could have as many attorneys as Robinson wanted in whatever capacity Robinson wanted, but that Robinson would have to pay for the assistance of counsel.

338. Kaufman and Cunan had no evidence that Robinson could afford to pay for an attorney.

339. Kaufman and Cunan agreed to violate Robinson's right to the assistance of counsel.

340. Robinson moved the court for a release upon Robinson's own recognizance.

341. Plumas County, California uses an O.R./BAIL REDUCTION REPORT to determine whether a defendant qualifies for a release on his own recognizance.

342. The recommendation guidelines state that, to qualify for a regular own recognizance release, a defendant must:

a. be booked on a single criminal case and have no pending criminal cases;

b. score at least 7 points on the point scale;

c. have a verified local address;

d. not be booked on a Failure to appear or have failed to appear within the past year.

e. receive a positive recommendation from at least one reference and must have no negative comments regarding reliability from either a reference or a probation officer.

Kaufman knew that Plumas County uses the OR/BAIL REDUCTION REPORT to determine whether a defendant qualifies for release on his own recognizance.

343. Cunan knew that Plumas County uses the OR/BAIL REDUCTION REPORT to determine whether a defendant qualifies for release on his own recognizance.

344. Kaufman knew the aforementioned recommendation guidelines for a defendant to qualify for an OR release.

345. Cunan knew the aforementioned recommendation guidelines for a defendant to qualify for an OR release.

346. Cunan and Kaufman stipulated that Robinson scored 15 on the point scale of the OR/BAILREDUCTION REPORT.

347. Cunan and Kaufman knew that Robinson:

a) was booked on a single criminal case and had no pending criminal cases;

b) scored 15 points on the point scale;

c) had a verified local address;

d) was never booked on a failure to appear and had never failed to appear;

e) received a positive reference related to reliability from three prominent citizens;

f) received no negative recommendations.

348. Cunan and Kaufman had no evidence that Robinson was a flight risk and was not a danger to the community.

349. Kaufman knew that Robinson qualified for an own recognizance release.

350. Cunan knew that Robinson qualified for an own recognizance release.

351. Cunan and Kaufman agreed to refuse to release Robinson on Robinson's own recognizance.

352. Cuanan and Kaufman did not state any reason for their agreement to continue to charge Robinson with a financial bond.

353. Kaufman and Cunan charged Robinson an unreasonable bond of $15,000 to further their conspiracy to wrongfully convict and imprison Robinson.

354. $35,000 was returned to Robinson's family.

355. In early 2001, Robinson's family retained Sacramento Attorney John Duree with a payment of about $12,000.

356. Duree agreed to present Robinson's justification defense to the jury.

357. Cunan, Kaufman and Olney knew Duree traveled to Quincy from Sacramento.

358. Cunan, Kaufman and Olney required Duree to make unnecessary trips to Quincy to render Duree ineffective by squandering Robinson's limited funds.

359. Cunan did not want Duree to present Robinson's justification defense to the jury.

360. Cunan did not want the jury to know the wording of the Compassionate Use Act.

361. On April 9, 2001 Cunan filed a motion to prevent Duree from presenting Robinson's justification defense to the jury.

362. Cunan also moved the court to exclude a Proposition 215 defense.

363. Duree filed a motion to present evidence on a justification defense.

364. Duree's motion was predicated upon a defendant's right to present a defense to a jury.

365. Duree's motion was based upon the affidavits of Marion Fry, M.D., medical marijuana expert Dale Shafer and Robinson.

366. Duree's motion presented conclusive evidence for all six factual elements of a justification defense.

367. Cunan's motion was predicated upon Cunan's conspiracy with Olney to wrongfully convict and imprison Robinson.

368. Cunan's motion was based solely upon Cunan's opinion.

369. Cunan's motion did not dispute that Duree's motion presented the required threshold evidence for all six factual elements of a justification defense.

370. Robinson's position was that distribution of marijuana for a medical purpose was justified because California Health & Safety Code Section 11362.5 declared that Californians have the right to obtain and use marijuana for a medical purpose when the use has been recommended by a physician and because most people who have physician recommendation to obtain and use marijuana for a medical purpose need the distribution of marijuana to obtain marijuana.

371. In 1996, the People of the State of California legislated California Health & Safety Code Section 11362.5, also known as the Compassionate Use Act of 1996.

372. The Compassionate Use Act of 1996 states that its purpose is to ensure that Californians have the right to obtain and use marijuana for medical purposes when that medical use has been recommended by a physician.

373. The Compassionate Use Act of 1996 states that its purpose is to encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients with physician recommendation.

374. Physicians issue prescriptions and make recommendations to alleviate suffering.

375. Most people with physician recommendation to use marijuana for medical purposes are not able to produce marijuana and do not have anybody who is ready, willing and able to produce marijuana and give it to them.

376. Nobody is able to produce marijuana instantaneously.

377. Distribution of marijuana is the only way to obtain marijuana for all of the people with the lawful right to obtain and use marijuana for a medical purpose when first authorized by a physician to obtain and use marijuana.

378. Most people with the lawful right to obtain and use marijuana for a medical purpose at all times would be unable to obtain marijuana without production and distribution for sale.

379. By the beginning of the year 2000, neither the federal nor the state governments had provided for the distribution of marijuana for a medical purpose.

380. By the beginning of the year 2000, only private individuals provided for the distribution of marijuana for a medical purpose.

381. Robinson did not cause this problem.

382. Robinson's production and distribution of medical marijuana alleviated suffering for people who obtained and used it pursuant to California law and physician recommendation.

383. Robinson's production of marijuana caused no harm.

384. On April 13, 2001 Robinson appeared in court with Duree for a hearing on Duree's in limine motion for use of a justification defense for the distribution of medical marijuana to people with the lawful right to obtain and use medical marijuana.

385. Olney was the judge

386. Cunan was the prosecutor.

387. Justification is a matter of fact.

388. A jury decides matters of fact.

389. Olney knew that justification is a matter of fact.

390. Cunan knew that justification is a matter of fact.

391. Olney knew that a jury decides matters of fact.

392. Cunan knew that a jury decides matters of fact.

393. Necessity may be used as a defense for any act.

394. Olney knew that justification may be used as a defense for any act.

395. Cunan knew that justification may be used as a defense for any act.

396. Olney and Cunan did not claim Duree had failed to present the required threshold evidence for any of the six factual evidence of a justification defense.

397. Olney and Cunan decided the distribution of medical marijuana is not justified.

398. Olney and Cunan prevented Robinson from presenting justification evidence to the jury to further their conspiracy to wrongfully convict and imprison Robinson.

399. Olney and Cunan prevented Robinson from informing the jury of the wording of the Compassionate Use Act to further their conspiracy to wrongfully convict and imprison Robinson.

400. Duree informed Robinson that Cunan and Olney had rendered Duree ineffective.

401. Olney, Cunan and Duree had a private meeting.

402. Olney and Cunan agreed and announced in court that Robinson qualified for release on bail pending appeal if

Robinson would waive his right to a jury trial and allow Olney to decide whether Robinson is guilty or not guilty.

403. Robinson's family refused to continue to pay for an attorney whose cost was driven up by useless appearances demanded by the same Plumas County Court Officers who rendered that attorney useless by preventing the jury from hearing evidence of justification or the wording of the Compassionate Use Act of 1996.
404. Robinson arranged the sale of his primary residence to raise money to pay for an attorney.
405. Duree agreed to accept a lien against that property for payment.
406. United States government employees, in cooperation and conspiracy with Plumas County officers and employees, filed a lien against Robinson's interest in that property.
407. United States Attorney Courtney Linn filed a forfeiture action against Robinson's primary residence.
408. When the sale of this property closed in mid-March, 2001, Robinson did not receive any money.
409. United States Government employees did seize Robinson's equity of $75,037.
410. Robinson informed Duree that Robinson had no more funding to pay Duree.
411. Robinson and Duree negotiated a settlement for the remainder of the approximately $18,000 in billings for the one in limine motion.

412. On May 1, 2001 Robinson appeared in court with Duree to remove Duree from the case and move the court for assistance of counsel.
413. Olney was the judge.
414. Cunan was the prosecutor.
415. Robinson and Duree informed Olney and Cunan that Duree had withdrawn from Robinson's case.
416. Robinson moved the court for the assistance of counsel.

417. Robinson informed the court that Robinson did not have the money to retain another attorney, that he was indigent.

418. Olney required Robinson to complete a financial statement.

419. Robinson inquired whether the financial statement was confidential.

420. Olney said, "That's a good question."

421. Cunan failed to respond.

422. The clerk said, "Yes it is."

423. Olney began to question Robinson about finances in front of Cunan.

424. Robinson objected and requested confidentiality.

425. Olney ordered Cunan to leave the courtroom.

426. Cunan departed.

427. Robinson confidentially completed a financial form.

428. Olney ruled that Robinson qualified for appointed counsel.

429. Robinson informed Olney that Robinson would remain the attorney of record and requested assistance of counsel.

430. Olney appointed Public Defender Doug Prouty.

431. Olney continued the assistance of counsel issue until May 7, 2001.

432. When Robinson spoke with Prouty, Robinson inquired whether Prouty was ready, willing and able to raise the issues required for a fair trial, prepare for trial and ensure Robinson's right to a speedy trial.

433. Prouty informed Robinson that Prouty's heavy public defender caseload in addition to Prouty's private caseload would make it impossible for Prouty to be fair to all of his current clients and proceed in a timely fashion with a legally complicated case like Robinson's.

434. Robinson requested that Prouty inform the court that Prouty would not be able to be effective in Robinson's case in a timely manner.

435. On May 7, 2001 Robinson appeared in court to move the court for the assistance of counsel.

436. Olney was the judge.
437. Cunan was the prosecutor.
438. Olney informed the court that his disqualification was next and that all other issues must wait.
439. Cunan objected and stated that he wanted to get to sentencing.
440. Olney continued the assistance of counsel issue until May 21, 2001.
441. Robinson objected on the ground that two weeks was insufficient time for the disqualification decision.
442. Olney insisted on a date of May 21, 2001.

443. On May 21, 2001 Robinson appeared in court to move the court for the assistance of counsel.
444. Olney's disqualification was not yet decided.
445. Olney continued the assistance of counsel issue until June 4, 2001.

446. On June 4, 2001 Robinson appeared in court to move the court for the assistance of counsel.
447. Olney was the judge.
448. McGowan was the prosecutor.
449. Prouty was present.
450. Olney informed the court that he had was requalified.
451. Robinson informed the court and Prouty that Robinson wished to maintain control over his case and have the assistance of counsel.
452. Olney stated that if counsel is to be appointed then counsel is going to be in charge of the case.
453. Olney appointed Prouty to represent Robinson and take control of the case.
454. Prouty informed Olney that Prouty could not accept the appointment because Prouty could not render effective assistance for Robinson.
455. Olney continued the issue of Prouty's appointment until June 5, 2001.

456. On June 5, 2001 Robinson appeared in court to move the court for the assistance of counsel.
457. Olney was the judge.
458. Cunan was the prosecutor.
459. Prouty was present.
460. Prouty informed the court that he could not ethically or legally accept the appointment.
461. Robinson informed the court that he would like to have all of his rights upheld in this court.
462. Robinson inquired whether he had the right to appear in court and present his own case.
463. Olney answered, "Yes".
464. Robinson inquired whether he had the right to the assistance of counsel.
465. Olney answered, "Yes".
466. Robinson inquired whether he had to give up one right to secure the other.
467. Olney answered, "Yes".
468. Olney stated that Robinson must give up control of his case to have the court appoint an attorney to represent him.
469. Olney told Prouty that Olney had no choice because Prouty was the only attorney Olney could appoint for Robinson.
470. Olney said that Prouty could renew his argument against the appointment if he wished.
471. Prouty renewed his argument against appointment.
472. Prouty stated that he was extremely concerned about the prejudicial effect this case may have on his other cases.
473. Prouty stated that he had about 35 other Public Defender clients.
474. Prouty stated that he understood Robinson's case would take a lot of time.
475. Prouty stated that he had no experience in medical marijuana or justfication.
476. Olney interrupted Prouty with the assurance that Olney would accommodate Prouty with any conflicting cases on

his calendar and that he would speak with Judge Kaufman to advise him of Prouty's involvement in this case and to make the other work for Prouty as light as possible, so that we can pursue this matter.

477. Prouty stated that he felt very strongly that this case would have a negative prejudicial effect on his other cases if he filed the motions Robinson had requested.

478. Olney informed Prouty that Prouty was "in charge of the case" "the one who makes decisions whether the motions are viable or not".

479. In response to Prouty's concern about effectively representing Robinson because Prouty had never done a necessity defense or a medical marijuana defense, Olney assured Prouty that, "The law in that area is not all that complicated." and, "By all means, if you need some time to acquire further specialized knowledge in the area, we'll certainly do that."

480. Cunan returned to the court.

481. Olney informed Cunan that he had appointed Prouty to represent Robinson.

482. Olney restated the agreement negotiated between Duree, Cunan and Olney whereby the court guaranteed bail pending appeal for Robinson if Robinson agreed to waive his right to a jury trial and accept a court trial.

483. Olney informed Robinson that, if Robinson insisted upon his right to a jury trial rather than a court trial, if convicted, there would be no bail pending appeal.

484. Olney asked Robinson to reconsider his demand for a jury trial.

485. Robinson demanded a jury trial.

486. Olney stated that the next issue was the setting of a trial date.

487. Olney declared that Robinson had the right to a speedy trial within 60 days.

488. Olney suggested July 24, 2001.

489. Prouty informed Olney and Cunan that Robinson would waive time to allow Prouty to properly get caught up to speed on the case.

490. Cunan, Olney and Prouty knew that the usual practice and policy was to allow a busy defense attorney time to make pre-trial motions and to prepare for trial.

491. Cunan, Olney and Prouty knew that Olney could have gone outside Plumas County to hire an attorney who was ready, willing, and able to be effective and timely in Robinson's case.

492. Cunan stated that he would not waive time.

493. Cunan demanded that a trial date be set within 60 days on the ground that the state was claiming the right to a speedy trial.

494. The purpose of the Bill of Rights was to protect the individual from unfair government prosecution.

495. Cunan, Olney and Prouty knew that the purpose of the Bill of Rights speedy trial clause is to protect the individual from unfair government prosecution.

496. Cunan, Olney and Prouty knew that the right to a speedy trial may be waived by the defendant for the benefit of the defendant.

497. Cunan, Olney and Prouty knew that a trial within 60 days would deprive Robinson of the effective assistance of counsel.

498. Olney ruled both the defendant and government have a right to a speedy trial.

499. Olney set the trial for July 24, 2001.

500. Plumas County has the policy or practice of appointing counsel for felony defendants under circumstances that make it impossible for counsel to be effective.

501. Cunan, Olney and Prouty agreed to set the trial within 60 days, on July 24.

502. Olney set a motions date of June 29, 2001.

503. Olney and Cunan appointed Prouty under conditions that made it impossible for Prouty to be effective to further their conspiracy to wrongfully convict and imprison Robinson.

504. On June 29, 2001 Robinson appeared in court to move for the effective assistance of counsel.
505. Olney was the judge.
506. Cunan was the prosecutor.
507. Prouty was the attorney of record for Robinson.
508. Robinson moved the court to replace Prouty with an attorney who was ready, willing and able to be effective in Robinson's case because Robinson requested that Prouty prepare and file several motions for Robinson, including, but not limited to, a motion to suppress all evidence obtained through the unlawful warrant and a Penal Code Section 866.5 motion to suppress Robinson's unlawfully obtained preliminary hearing testimony, and a motion for change in venue, and Prouty failed and refused to file these or any other motions for Robinson.
509. Olney cleared the courtroom.
510. Olney informed Robinson that it was Robinson's opportunity to be heard.
511. Robinson called Doug Prouty to the witness stand.
512. Prouty was present.
513. Prouty had personal knowledge of facts relevant to the issue of whether Prouty was ready, willing and able to be effective.
514. Olney knew that Prouty had personal knowledge of facts relevant to the issue of whether Prouty was ready, willing and able to be effective.
515. Olney failed and refused to enforce Robinson's subpoena of Prouty so that Robinson could interrogate Prouty on the record related to Prouty's ability to be effective.
516. Prouty agreed with Olney's refusal to enforce Robinson's subpoena of Prouty.
517. Robinson testified to facts that showed Prouty did not have the time to be effective in Robinson's case.
518. Prouty did not testify.
519. Prouty was not subject to Robinson's examination.
520. Olney failed and refused to replace Prouty with an attorney who was ready, willing and able to be effective to

further the conspiracy to wrongfully convict and imprison Robinson.

521. On July 12, 2001 Robinson appeared in court to take control of his case.

522. Robinson fired Prouty and proceeded without the assistance of counsel because:

a) Robinson did not have the money to pay for the assistance of counsel;

b) Olney had appointed Prouty under circumstances that made it impossible for Prouty to be effective;

c) Prouty was not ready, willing and able to be effective;

d) Olney failed and refused to provide Robinson with a fair opportunity to be heard on Robinson's motion to replace Prouty with effective counsel.

e) With Prouty as attorney of record, Robinson would be unable to move the court.

523. Olney appointed Prouty as "advisory counsel".

524. Before trial, Robinson filed a motion to exclude his preliminary hearing testimony from trial.

525. In this motion, Robinson cited California Penal Code Section 866.5.

526. Penal Code Section 866.5 declares that a defendant may not be examined at the examination unless he is represented by counsel or waives his right to counsel after being advised at such examination of his right to the aid of counsel.

527. In this motion, Robinson informed Olney and Cunan that Robinson was not represented by counsel at the preliminary hearing, that Robinson had requested appointed counsel at the preliminary hearing, that Robinson had not waived his right to the assistance of counsel at the preliminary hearing, and that Robinson was erroneously found not to qualify for appointed counsel at the preliminary hearing.

528. Olney and Cunan possessed the court records that verified the foregoing.

529. Robinson argued that Olney, on 11/22, and Pangman, on 12/7, had failed to permit Robinson to provide confidential financial data.

530. Robinson argued that Olney and Pangman had incorrectly ruled that Robinson did not qualify for court appointed counsel.

531. Robinson argued that Robinson's testimony at the preliminary hearing was elicited unlawfully, in violation of California Penal Code Section 866.5.

532. Robinson argued that his preliminary hearing testimony must be excluded from trial.

533. Cunan filed an opposition to Robinson's Penal Code Section 866.5 motion.

534. In his opposition to Robinson's 866.5 Motion, Cunan knowingly, willingly and maliciously made the false claim that Robinson had waived Robinson's right to the assistance of counsel prior to and through the preliminary hearing.

535. Cunan knowingly, willingly and maliciously made the false claim that Robinson was advised of his right to counsel at the preliminary hearing but chose instead to represent himself.

536. The record shows that Robinson did not waive his right to the assistance of counsel at the preliminary hearing.

537. The record shows that Robinson made continuous repeated requests, including two written motions, for the assistance of counsel before, during and after the preliminary hearing.

538. Cunan knew that Robinson did not have counsel at the preliminary hearing.

539. Cunan knew that Robinson did not waive counsel at the preliminary hearing.

540. Cunan knew the wording of Penal Code Section 866.5.

541. Olney knew that Robinson did not have counsel at the preliminary hearing.

542. Olney knew that Robinson did not waive counsel at the preliminary hearing.

543. Olney knew the wording of Penal Code Section 866.5.

544. Prior to 1963, the California Court of Appeal, Third Appellate District, ruled that to take the examination at the preliminary hearing of a defendant who is without counsel and who has not waived the right to counsel and then use that testimony at trial to convict the defendant violates "all the rules of fair play".

545. Olney and Cunan used Robinson's unlawfully obtained and edited preliminary hearing testimony against Robinson at trial to further their conspiracy to wrongfully convict and imprison Robinson.

546. On July 30, 2001 Robinson appeared in court for trial.

547. Olney and Cunan gave the jury the part of Robinson's preliminary hearing testimony, which, according to the jury instructions of Olney and Cunan constituted an admission of the charges against Robinson.

548. Olney and Cunan withheld from the jury the part of Robinson's preliminary hearing testimony that justified Robinson's production of marijuana for people with the lawful right to obtain and use marijuana for medical purposes.

549. Olney and Cunan prevented Robinson from informing the jury of the law, facts and circumstances that justified his distribution of medical marijuana.

550. Olney and Cunan prevented Robinson from informing the jury of the wording of the Compassionate Use Act of 1996 that authorized people to obtain and use marijuana for medical purposes.

551. Olney and Cunan instructed the jury to reach a guilty verdict.

552. Olney and Cunan violated all the rules of fair play, and then some.

553. The jury returned a guilty verdict.

554. Olney and Cunan convicted Robinson without jurisdiction over the person of Robinson to further their conspiracy to wrongfully convict and imprison him.

555. On August 29, 2001 Robinson appeared in court to request bail pending appeal.

556. Robinson requested a release on bail pending appeal.

557. Olney and Cunan refused to release Robinson on bail pending appeal because Robinson exercised his right to a jury trial.

558. Olney and Cunan knowingly wrongfully sentenced Robinson to three years in state prison.

559. Olney and Cunan imprisoned Robinson for 582 days.

560. Olney and Cunan refused to release Robinson on bail pending appeal to further their conspiracy to wrongfully convict and imprison Robinson.

561. On September 4, 2001 Robinson filed a notice of appeal.

562. The Plumas County Court Clerk sent a complete copy of the record to Robinson's appellate attorney.

563. The Plumas County Court Clerk sent a complete copy of the record to California Attorney General Bill Lockyer.

564. Lockyer provided Deputy Attorney General Smith with a complete copy of the record.

565. On April 25, 2002 Plaintiff filed his appeal in the Court of Appeal of the State of California, Third Appellate District. (Case Number C039311)

566. Robinson argued that the admission of his preliminary hearing testimony at trial violated his right to counsel because he was not represented by counsel and did not waive his right to counsel at the preliminary hearing, but repeatedly demanded the assistance of counsel.

567. Lockyer was served with Robinson's appeal.

568. On July 24, 2002 Smith responded to Robinson's appeal.
569. Smith alleged that Robinson waived his right to counsel.
570. Smith knew that Robinson did not waive his right to counsel at the preliminary hearing.
571. Smith lied to further the conspiracy to wrongfully imprison Robinson.
572. California has the practice of wrongful imprisonment.
573. On March 18, 2003 the Court of Appeal of the State of California, Third Appellate District, reversed Robinson's conviction.
574. This Court concluded that the record does not support Smith's allegation that Robinson waived his right to counsel.

575. A copy of this appellate ruling was served upon Plumas County and the California Attorney General.

576. Cunan read the ruling.
577. Cunan spoke to Feather River Bulletin Reporter Tiffany Wood about this appellate court reversal of Robinson's conviction.

578. On April 9, 2003 The Feather River Bulletin pubished an article authored by Tiffany Wood entitled "MARIJUANA GROWER MAY WIN APPEAL".
579. In this article, Wood quotes Cunan: "I want to do whatever it takes to make sure everyone involved in this case understands that Mr. Robinson is guilty of the crimes he was convicted of; that may or may not include refiling."
580. On May 9, 2003 Attorney James Bisnow sent a letter to Cunan on behalf of Robinson.

581. Bisnow requested that Cunan contact Bisnow to inform Robinson of how Cunan intended to proceed.
582. This letter requests that Cunan respond.
583. Cunan failed to respond to Bisnow's letter.

584. The California Attorney General did not appeal the appellate court ruling to the Supreme Court of the State of California.

585. On May 20, 2003 the appellate court remitted Robinson's case back to the Plumas County court.
586. A copy of the REMITTITUR was sent to Plumas County District Attorney Cunan.
587. A copy of the REMITTITUR was sent to the Plumas County Court.
588. A copy of the REMITTITUR was sent to the California Attorney General.
589. On May 22, 2003 the REMITTITUR was filed in the Plumas County Court.

590. Attorney John Duree spoke with Cunan on behalf of Robinson.
591. Duree inquired whether Cunan would proceed against Robinson.
592. Cunan did not provide a definite response.

593. California Penal Code section 1382 mandates that the judge must dismiss an action if the defendant is not brought to trial within 60 days of the filing of the REMITTITUR in the trial court, and the prosecution cannot show good cause for the delay.
594. July 21, 2003 was the 60th day following the filing of the REMITTITUR in the Plumas County court.

595. Prior to July 21, 2003 Cunan had taken no action in Robinson's case.

596. Prior to July 21, 2003 Olney had taken no action in Robinson's case.

597. On July 21 2003 Olney issued a minute order in Robinson's case.

598. Olney 's minute order states that Robinson's case would be on calendar for "hearing" on August 18, 2003 at 1:30 P.M.

599. Olney failed to state the name of the party that moved the court for this "hearing".

600. Olney failed to state any cause of this "hearing".

601. Olney failed to state any purpose for this "hearing".

602. The Plumas County court knew or should have known that Robinson had paroled to Maryland when paroled from prison.

603. The Plumas County court sent notice of Olney's 8/18/03 "hearing" to the California post office box that Robinson had prior to being wrongfully convicted and imprisoned.

604. Robinson did not receive this notice.

605. Robinson contacted the Plumas county Court by telephone to inquire whether any action had been taken in Robinson's case.

606. The clerk informed Robinson of Olney's order for an August 18, 2003 "hearing".

607. Robinson inquired whether notice of Olney's "hearing" had been sent to Robinson.

608. The clerk informed Robinson that notice of Olney's "hearing" had been sent to Robinson's defunct Greenville, California post office box.

609. Robinson informed the clerk of Robinson's current Maryland address.

610. The clerk sent a copy of Olney's order to Robinson in Maryland.

611. Robinson notified his Maryland parole officer, settled the lease on his home, put his property in storage, took an unlimited leave of absence from his employment, loaded his

dog in his vehicle and drove to California to comply with Olney's order.

612. On August 18, 2003 Robinson appeared in court.
613. Olney was the judge.
614. Cunan was the prosecutor.
615. Olney and Cunan failed and refused to provide Robinson with an opportunity to be heard.
616. Olney read the charges to Robinson.
617. Olney entered a plea of "not guilty" for Robinson.
618. Olney and Cunan set trial date of September 27, 2003.
619. Olney and Cunan set a motions date of September 12, 2003.
620. Without request from Robinson and without financial consideration, Olney and Cunan appointed Prouty to represent Robinson.
621. Prouty informed Olney and Cunan that he was too busy to take Robinson's case.
622. Olney appointed Lassen County Attorney Traci Witry to represent Robinson.
623. Olney recessed Robinson's case to telephone Witry.
624. Olney informed Robinson Witry had accepted the appointment.
625. Olney provided Robinson with Witry's telephone number.
626. Olney dismissed Robinson's case for the day.

627. On August 28, 2003 Witry filed a motion to dismiss on the ground of a violation of Robinson's right to a speedy trial.
628. On August 29, 2003 Cunan filed a response to Witry's motion to dismiss.
629. Cunan admitted that Robinson's right to a speedy trial had been violated.
630. Cunan admitted that there was no good cause for the violation of Robinson's right to a speedy trial.

631. Cunan admitted that the charges must be dismissed.

632. Cunan blamed "the court" for failure to properly notice Robinson.

633. In the conclusion of Cunan's response to Witry's motion to dismiss, Cunan states that Robinson ".....is entitled to his Pyrrhic victory".

634. Webster's Unabridged Dictionary defines "Pyrrhic victory" as "a victory achieved at too great a cost".

635. For the first time in this case, Robinson agreed with Cunan: Robinson was entitled to the victory, and the victory was achieved at too great a cost.

636. On September 3, 2003 Olney and Cunan dismissed all charges against Robinson.

637. Robinson complained to the California Attorney General, California Bar and California Commission on Judicial Performance, and the Plumas County Grand bJury that Plumas County Court Officers Kaufman, Pangman, Olney, Cunan and McGowan conspired to wrongfully convict and imprison Robinson by violating his rights to the assistance of counsel and to a jury trial.

638. None of the aforementioned agencies investigated Robinson's complaint.

639. California did nothing to prevent the Defendant Plumas County Court Officers (PCCO) from violating Robinson's right to the assistance of counsel.

640. California did nothing to punish the PCCO for violating Robinson's right to the assistance of counsel.

641. California has done nothing to prevent the PCCO or others in their positions from violating other people's right to the assistance of counsel in the future.

642. California condoned the violation of Robinson's right to the assistance of counsel by the PCCO.

643. California has the practice and defacto policy of condoning Constitutional rights violations by court officers.

644. California has the practice and defacto policy of condoning wrongful convictions and imprisonments by court officers.

645. California condones wrongful convictions and imprisonments to further judicial/prosecutorial conspiracies to wrongfully convict and imprison people

646. Plumas County Court Officers Olney, Kaufman, Pangman, Mcgowan and Cunan blatantly conspired to wrongfully convict and imprison Robinson through knowing violation of his right to counsel, his right to reasonable bail and his right to a jury trial because they believed they were immune from civil liability and because California does not prosecute, dismiss, punish or even reprimand court officers who violate statutory and Constitutional rights to wrongfully convict and imprison people.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 15, 2007 Joseph Robinson

PROOF OF SERVICE

I, Joseph Robinson, hereby declare that I am over the age of 18 years and that I am a party to within entitled cause of action, and, further, that on the date below I served the following documents with this proof of service by post paid first-class United States Mail in a sealed envelope.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI – STATEMENT OF FACTS THAT SHOW INTENT, MALICE AND CONSPIRACY.

To the following addresses:

State of California
California Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

William Pangman
Sierra County Superior Court
P.O. Box 476
Downieville, CA 95936

Garrett Olney
Plumas County Superior Court
520 Main Street; Room 104
Quincy, CA 95971

Ira Kaufman
Plumas County Superior Court
520 Main Street; Room 304
Quincy, CA, 95971

Porter, Scott, Weiberg & Delehant
Attention: Terrence Cassidy
P.O. Box 255428
Sacramento, CA 95865

Supreme Court of the United States
Office of the Clerk
1 First Street, N.E.
Washington, DC 20543

Originals and
Forty Copies

Further, I declare under penalty of perjury that the foregoing is true and correct and that the aforementioned documents were mailed as above described.

Date: June 15, 2007,

Joseph Robinson

Joe Rob

62

(4)

No: 06-1683

FILED
JUL 20 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Joseph Robinson,
PETITIONER

vs.

California, Plumas County, Jeff Cunan, Garrett Olney, Ira Kaufman, William Pangman, and Gary McGowan,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS PLUMAS COUNTY, JEFF CUNAN AND GARY MCGOWAN

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Attorneys for Respondents Plumas County, and
Deputy District Attorneys Jeff Cunan and Gary McGowan

QUESTIONS PRESENTED FOR REVIEW

Does the constitutional right to counsel guarantee a criminal defendant the right to collect damages from a county or individual prosecutors where the defendant's conviction was subsequently reversed because of the trial court's failure to provide counsel, or to secure a valid waiver, at the preliminary examination from which the defendant's testimony was used at trial in state court?

_____Does the constitutional right to counsel negate absolute immunities provided prosecutors under state and federal law when prosecutors perform their courtroom obligations on behalf of the state?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i
SUMMARY OF THE ARGUMENT 1
MISSTATEMENTS OF FACT OR LAW BY PETITIONER 3
A. Factual 3
B. Legal 3
ADDITIONAL LEGAL GROUNDS FOR DENYING THE WRIT PETITION 4
A. Petitioner Fails to State a Claim for the Deprivation of a Federal Right 4
B. Cunan and McGowan are Entitled to Absolute Prosecutorial Immunity 6
C. Petitioner Fails to State a Claim for Conspiracy ... 7
D. Petitioner Fails to State a Claim Against Plumas County 8
CONCLUSION 9

TABLE OF AUTHORITIES

Page

CALIFORNIA CASES

People v. Robinson
2003 Cal.App.Unpub. LEXIS 2622, *4-5 (2003) 5

FEDERAL RULES AND STATUTES

28 U.S.C. § 1254(1) 1
42 U.S.C. § 1983 ..... 1, 4, 8
42 U.S.C. § 1985 1,7
Federal Rules of Civil Procedure 8(a)(2) 2
Federal Rules of Civil Procedure 12(b)(6) 2
United States Supreme Court Rule 10(c) 1, 3, 4
United States Supreme Court Rule 15.2 4

FEDERAL CASES

Ashelman v. Pope
793 F.2d 1072 (9th Cir. 1986) 7
Brewster v. Shasta County
275 F.3d 803 (9th Cir. 2001) 8
Burns v. Reed
500 U.S. 478 (1991) 6
Caldeira v. County of Kauai
866 F.2d 1175 (9th Cir. 1989) 7
Ceballos v. Garcetti
361 F.3d 1168 (9th Cir. 2004) 8
Gideon v. Wainwright
372 U.S. 335 (1963) 3
Imbler v. Pachtman
424 U.S. 409 (1976) 6, 7
KRL v. Moore
384 F.3d 1105 (9th Cir. 2004) 4

McMillian v. Monroe County, Alabama
520 U.S. 781 (1997) 8
Meehan v. County of Los Angeles
856 F.2d 102 (9th Cir. 1988) 8
Monell v. New York City Dept. Of Social Services
436 U.S. 658 (1978) 8
Pembaur v. City of Cincinnati
475 U.S. 469 (1986) 8
Rice v. Sioux City Memorial Park Cemetery, Inc.
349 U.S. 70 (1955) 1
Thompson v. City of Los Angeles
885 F.2d 1439 (9th Cir. 1989) 8
Weiner v. San Diego County
210 F.3d 1025 (9th Cir. 2000) 8

SUMMARY OF THE ARGUMENT

In Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 79 (1955), this Court reiterated its longstanding rule:

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

The instant case, while potentially within this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1), does not meet either of the usual requirements for granting certiorari review.

Although Petitioner cites rule 10(c) of the United States Supreme Court Rules as the basis for his writ petition, he fails to demonstrate how this case fits within the rule's stated parameters. The memorandum opinion of the Ninth Circuit Court of Appeals affirming the District Court's decision dismissing Petitioner's action does not decide an important question of federal law that has not been, but should be, settled by this Court. It has long been established that state prosecutors may invoke statutory immunity from civil liability under 42 U.S.C. §§ 1983 and 1985, since the alleged violation here stemmed directly from individual Respondents' prosecutorial function. Moreover, the Ninth Circuit Court of Appeals did not decide any important federal question in a way that conflicts with relevant decisions of this Court. Again, it simply restated well established law. Petitioner nowhere suggests otherwise.

In the framework of a vituperative philosophical tract, Petitioner merely expresses frustration that he has been unable to recover money damages from any person or entity to compensate for his period of imprisonment before the California Court of Appeal reversed his felony conviction for, among other things, transporting marijuana and offering it for sale while armed with a firearm. Although it is true that the

criminal trial court was deemed to have erred in admitting Petitioner's preliminary examination transcript testimony at trial, such determination did not implicate the conduct of the prosecutors or Plumas County, their employer. The prosecutors did not improperly prevent the criminal trial court from appointing counsel at Petitioner's preliminary examination or, alternatively, procuring a valid waiver of Petitioner's right to an attorney. They simply performed their role as advocates, without ever engaging in untruthfulness.

Moreover, this case is no different from the vast number of other cases in which a criminal conviction is ultimately reversed on appeal, but only after the criminal defendant has already served at least some portion of his sentence. Petitioner tacitly rejects altogether the established principle of prosecutorial immunity, but suggests no legal authority supporting his idiosyncratic position that no immunity may apply to Respondents if Petitioner cannot find another source of monetary compensation for his period of post-conviction confinement. Prosecutors, however, should not be required to perform required obligations at their peril, for fear that a simple legal error by the trial court might result in their civil liability.

The federal district court dismissed Petitioner's action under rule 12(b)(6) of the Federal Rules of Procedure because no factual allegations indicated wrongdoing by the prosecutor Respondents, who were statutorily immune from civil damages anyway. Plumas County, meanwhile, could not be liable under a *respondeat superior* theory and no allegations suggested an official policy, practice or custom of the county caused injury to Petitioner. In any event, prosecutors in California act as state, not county, officers. Additionally, Petitioner fails to address the fact that the district court's dismissal of his action under rule 12(b)(6) of the Federal Rules of Civil Procedure was based, at least in part, upon Petitioner's utter disregard of the pleading requirement to allege a short and plain statement of his claim under rule 8(a)(2) of the Federal Rules of Civil Procedure. Indeed, he persists in his bare listing of well over 600 purported facts. (See Appendix to Petition–Statement of Facts)

MISSTATEMENTS OF FACT OR LAW BY PETITIONER

A. Factual

In Petitioner's Appendix of Alleged Facts, Petitioner sets forth some 646 factual allegations that he purports to verify. Since there are, of course, no citations to the record at this point, prosecutor Respondents will not endeavor to quibble in a vacuum with each of these allegations. As a systemic objection, however, prosecutor Respondents note that Petitioner repeatedly asserts, without foundation, supposed facts that prosecutor Respondents purportedly "knew" or "conspired" about with judges. As the findings adopted by the District Court establish: "[P]laintiff has failed to allege specific facts from which a conspiracy between defendants could be inferred." (Petitioner's Appendix of Opinions and Orders, p. 9).

It is also worth noting that in the petition itself (p. 6), Petitioner incorrectly refers to his facts under the heading of "false imprisonment." That is a clear misstatement because Petitioner alleged no cause of action for false imprisonment. Furthermore, Respondent prosecutors acting in their litigation role cannot be deemed to have falsely imprisoned someone merely because the criminal conviction they obtained was subsequently reversed for trial court error.

B. Legal

The only legal authority Petitioner names in his petition (p. 5) to support his rule 10(c) statement is Gideon v. Wainwright, 372 U.S. 335, 344-345 (1963). While that case generally supports Petitioner's position that an attorney (in the absence of a valid waiver) should have been appointed for him before his preliminary examination in the state criminal trial court, it says nothing about the right to civil compensation for a criminal defendant improperly convicted on the basis of such defendants' testimony given without appointed counsel. Petitioner's inability here to recover money to compensate him for his

imprisonment in no way diminishes the importance of the Sixth Amendment in reducing wrongful convictions by invalidating those resulting from violation of the constitutional provision.

Petitioner otherwise relies upon the concept of "equity" (pp. 5, 7), supported by reference to a Latin maxim, but no legal authority of any kind. As in his factual statement, Petitioner in his legal argument persistently relies upon the prosecutor Respondents' purported knowledge of error, or "agreement" with the criminal trial court judges to rule incorrectly against Petitioner (pp. 9-10). Again, there is no specific factual foundation alleged to support such speculation, nor would it be material even if true. Petitioner cites no authority contradicting or in any manner questioning the authority cited in the memorandum opinion of the Ninth Circuit Court of Appeals in the instant case. KRL v. Moore, 384 F.3d 1105, 1110 (9th Cir. 2004). Prosecutor Respondents enjoy absolute immunity for their core prosecutorial activities in court as against a criminal defendants.

ADDITIONAL LEGAL GROUNDS FOR DENYING THE WRIT PETITION

Rule 15.2 of the U.S. Supreme Court Rules indicates that a brief in opposition should also set forth other arguments for denying the petition besides those stemming from rule 10 judicial discretion factors. The District Court and the Court of Appeals were clearly correct in their legal analysis, which explains why Petitioner cannot prevail on the merits. Plumas County Respondents herein succinctly set forth the legal basis for dismissing Petitioner's action for damages against them.

A. Petitioner Fails to State a Claim for the Deprivation of a Federal Right.

In his Second Amended Complaint, Robinson alleges that he was deprived of his constitutional rights in that he was wrongfully convicted and imprisoned, and that his right to assistance of counsel was violated. The District Court concluded that there was no nexus between the alleged conduct of which Plaintiff complained and any

existence of a deprivation by Respondents of a right, privilege or immunity secured by federal law under 42 U.S.C. § 1983. See Petitioner's Appendix of Opinions and Orders, p. 8.

Section 1983 provides, in pertinent part:

> Every person who, under color of any statute of any state . . ., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured[.]

Deprivation of counsel at a preliminary hearing was in no way a decision made by Cunan or McGowan, who were assigned to prosecute Robinson. The state appellate opinion, which overturned Robinson's criminal conviction, states that the purported procedural error at issue in this case was due to a *judicial* decision to proceed with the preliminary hearing without Plaintiff being represented by counsel. Specifically, the California Court of Appeal concluded as follows:

> Judge Olney questioned defendant about his finances in the presence of the prosecutor. . . . The court opined that defendant could go to a bank, get a second mortgage, and pay for an attorney. . . . The court found defendant did not qualify for court-appointed counsel.

People v. Robinson, 2003 Cal.App.Unpub. LEXIS 2622, *4-5 (2003) (emphasis added). The state appellate court never assigned any error regarding the provision of counsel to the district attorneys or to Plumas County. Clearly, any decision regarding the provision or presence of

counsel on Petitioner's behalf was a decision by the court, not the district attorneys appearing before the court in the proceeding. Thus, Petitioner has failed to state a claim against the Respondent deputy district attorneys for violation of a constitutional right.

B. Cunan and McGowan are Entitled to Absolute Prosecutorial Immunity.

It is well-established that prosecutors are "absolutely immune from liability under Section 1983 for . . . "*[any] conduct* that is intimately associated with the judicial phase of the criminal process.'" Burns v. Reed, 500 U.S. 478, 486 (1991) (internal citations omitted) (emphasis added) (quoting Imbler v. Pachtman, 424 U.S. 409, 431 (1976)). Accordingly, a prosecutor enjoys absolute immunity in prosecuting a criminal suspect and in proceeding with that prosecution through the verdict, regardless of the activity that occurs within the parameters of those proceedings. See Burns, supra, 500 U.S. at 486. So long as the prosecutor is acting as an advocate for the State, his or her actions are protected, even if those actions are malicious or dishonest. Imbler, supra, 424 U.S. at 428.

Here, Robinson contends that Cunan and McGowan remained in the courtroom and argued before a judge against the appointment of counsel for him during financial solvency hearings in his criminal prosecution. See Petitioner's Appendix of Alleged Facts ¶¶ 224-231, 276-281. Thus, Petitioner admits that any actions of the district attorney Respondents occurred in a judicial phase of the criminal case against him. Pursuant to Burns, supra, a prosecutor need only show that the activity in question occurred within the parameters of a judicial proceeding to be entitled to absolute immunity. Every alleged act of which Petitioner complains against Cunan and McGowan is related to Petitioner's criminal prosecution and, notably, every alleged act complained of occurred inside a courtroom during various aspects of the criminal prosecution. Whether Cunan or McGowan should properly have been in the courtroom during the solvency hearings and making arguments therein simply is not relevant, because they could not have advocated any position at all to the trial court had they not been acting

in their roles as prosecutors.

Petitioner cannot set forth any facts that would establish liability in this matter. In effect, Robinson asks this Court to create an exception to the doctrine of absolute prosecutorial immunity for him and him alone. (Petition, p. 9) Assuming *arguendo* that Petitioner had sustained some violation of his rights (which Respondents deny and which argument the District Court and Ninth Circuit Court rejected), this court has made clear that any lack of remedy cannot justify denying a prosecutor the absolute immunity to which he or she is entitled:

> To be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, but the alternative of qualifying a prosecutor's immunity would disserve the broader public interest.

Imbler, supra, 424 U.S. at 427. Based on the foregoing, Cunan and McGowan are entitled to absolute prosecutorial immunity. They would be unable to perform their respective jobs at all if constantly threatened with civil liability for any error they might make as prosecutors.

C. Petitioner Fails to State a Claim for Conspiracy.

Petitioner makes only cursory reference to his claims for conspiracy. See Petitioner's Appendix of Alleged Facts ¶¶ 258, 289, 309. Petitioner has presented no legal theory or argument, nor any facts, to support a claim for conspiracy. Moreover, as noted by the District Court, and as discussed above, Robinson has failed to state a claim that Appellees violated his constitutional under § 1983, which is a prerequisite to suit for conspiracy under § 1985. See Caldeira v. County of Kauai, 866 F.2d 1175, 1182 (9th Cir. 1989) ("the absence of a section 1983 deprivation of rights precludes a section 1985 conspiracy claim predicated on the same allegations"). Finally, assuming a

conspiracy actually existed to prosecute Plaintiff and deny him counsel, Respondents Cunan and McGowan are protected by absolute prosecutorial immunity for this claim, as well. Ashelman v. Pope, 793 F.2d 1072, 1077-78 (9th Cir. 1986) ("allegations that a conspiracy produced a certain decision should no more pierce the actor's immunity than allegations of bad faith, personal interest or outright malevolence."). Thus, the Petitioner's conspiracy claims lack merit as a matter of law.

D. Petitioner Fails to State a Claim Against Plumas County.

Robinson's assertion of § 1983 liability against Plumas County is based upon the alleged actions of Cunan and McGowan. Under federal law, only "person[s]" acting under color of law are liable for civil rights violations under § 1983. 42 U.S.C. § 1983. A state or state agent performing a government function is not a "person" who may be sued under §1983; individuals and agencies that are considered "arms of the state" are not "persons" within the meaning of §1983. Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A district attorney is "a state official when he acts as a public prosecutor. . . . In the prosecution of criminal cases he acts by the authority and in the name of the people of the state." Ceballos v. Garcetti, 361 F.3d 1168, 1182-1183 (9th Cir. 2004); see Brewster v. Shasta County, 275 F.3d 803, 810-11 (9th Cir. 2001). Thus, any policy the district attorney establishes is a policy made on behalf of the State of California, not the local county in which that district attorney works. Weiner v. San Diego County, 210 F.3d 1025, 1028 (9th Cir. 2000); see McMillian v. Monroe County, Alabama, 520 U.S. 781 (1997). There is no respondeat superior liability under §1983. See Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978); Meehan v. County of Los Angeles, 856 F.2d 102, 106-07 (9th Cir. 1988). Thus, § 1983 mandates that local government entities may only be held liable for constitutional injuries that are inflicted pursuant to municipal policy, practice or custom. Monell, supra; Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986). Here, Petitioner vaguely asserts that Plumas County,

through the actions of its deputy district attorneys, had some sort of policy or practice to deny criminal defendants their constitutional right to counsel. Any policies or practices in this regard necessarily would have been promulgated by District Attorney Reichle, whom Petitioner voluntarily dismissed. However, Reichle does not set policy for Plumas County in any event, as any policymaking authority which Reichle has as District Attorney is exercised on behalf of the State of California. Thus, because Reichle is not the formal policymaker as to Plumas County, he does not represent Plumas County in any individualized decisions he may make regarding criminal prosecutions. Accordingly, Plumas County cannot be liable for any of Reichle's conduct or decisions Petitioner alleges in this action.

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should promptly be denied. It raises no new or controversial issues of law. In any event, Petitioner is manifestly wrong on the law. Petitioner's contention hinges upon the gutting of basic principles and immunities long established in both California and federal law. He may not recover damages against state prosecutors performing their courtroom obligations.

Date: July 20, 2007 Respectfully submitted,

Terence J. Cassidy
Porter Scott
Attorney for Respondents